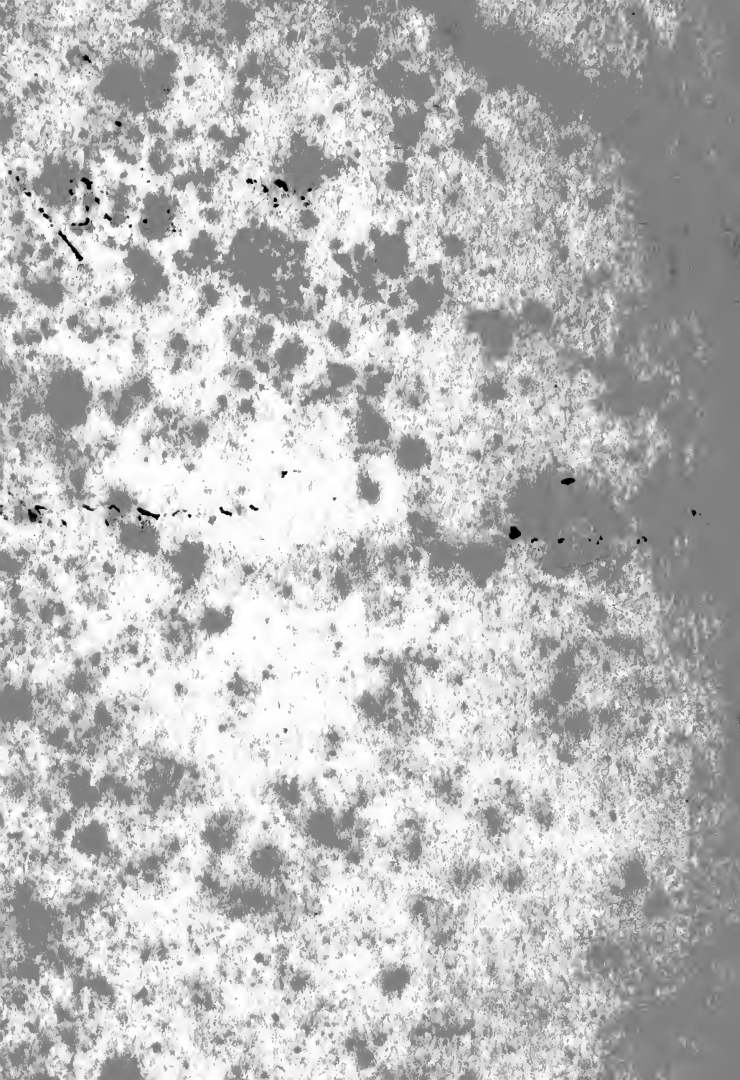




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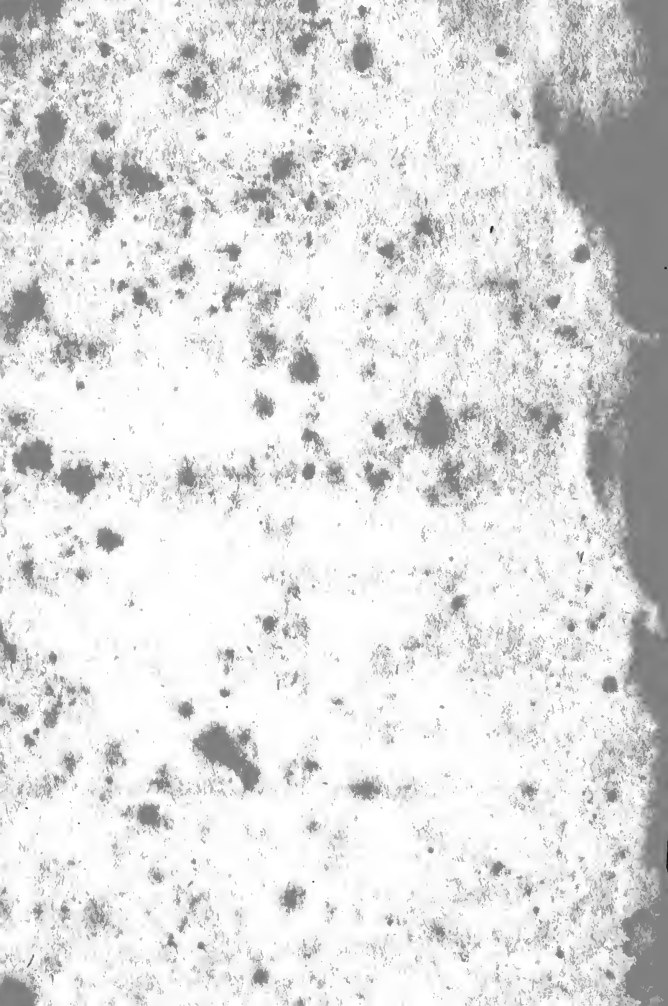
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THE

American Remembrancer;

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AN IMPARTIAL COLLECTION

OF

ESSAYS, RESOLVES,

SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.

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# C O N T E N T S.

	Page
<i>SPEECH of Mr. Charles Pinckney, at Charleston, July 22d, 1795</i>	5
<i>Speech of Mr. J. Thompson, at Petersburg, August 1st, 1795</i>	21
<i>Proceedings of a Town Meeting at Wilmington, Au- gust 4th, 1795</i>	28
<i>Speech of Mr. Casar Rodney, at Wilmington, Au- gust 4th, 1795</i>	29
<i>Memorial of the Citizens of Wilmington and its Vi- cinity to the President of the United States</i>	36
<i>Reply of the President to the Citizens of Wilmington</i>	38
<i>_____ to the Selectmen of Boston</i>	39
<i>Observations on the constitutional Power to form Treaties</i>	40
<i>Camillus, No. I.</i>	41
<i>_____ No. II.</i>	47
<i>_____ No. III.</i>	53
<i>_____ No. IV.</i>	62
<i>_____ No. V.</i>	68

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## Speech of Mr. Charles Pinckney,

*Late Governor of South Carolina, at a very numerous Meeting of the Citizens of Charleston, the 22d July, 1795, to hear the Report of their Committee on the Treaty between Great-Britain and the United States of America. Carefully collected from the Notes of Mr. Pinckney, and afterwards inspected by himself.*

HE began by saying, that having been absent in the country, he was prevented from attending their meeting on the 16th—but, conceiving it the duty of every friend to his country, on an occasion so interesting to their commercial rights, he requested permission to state some observations in support of the opinion he should give on the treaty.

In doing this, he said he should follow the advice that had just been properly given by the Intendant, and be very moderate. In discussions of such importance, moderation appeared to him essential to the discovery of truth.

It was somewhere very well said, that passion and intemperance never failed to wrest the sceptre from reason; and he hoped they would not, on this interesting occasion, prevent the fair application of argument to the judgment of an assembly so numerous and respectable as that was.

In examining the treaty, it appeared to him necessary previously to trace the manner in which Mr. Jay, had been appointed to this trust, and the instructions he had received; in order to determine how far it was conducted, in its commencement and progress, upon those principles which were conformable to the spirit and intention of that article of the constitution which respects treaties, and to the candor and fairness which ought to govern in all negotiations where any thing like reciprocity is to be expected, and where there was no determination, on the part of the government, or its negotiator, that unnecessary and dishonorable sacrifices were to be made.

He said that it must here be acknowledged, that as Mr. Jay's appointment had originated in a breach, if not of the letter, yet most clearly of the spirit of the constitution—which seems to have intended, that a judiciary should be erected in a manner that would render it independent of the influence of

the executive and legislature, or of those prejudices which the most distant connection with either must necessarily produce; and that the same man should not have it in his power to form a treaty, and afterwards, as a judge, prejudiced as he must be by being concerned in its negotiation, to decide upon its meaning: so there had appeared, for a considerable time, a determination in a party in our government to force a connection with Great Britain, not only at the risk of this valuable guard to the administration of justice, by establishing a precedent for taking the judges from the bench, *while in office*, and giving them diplomatic or other appointments, but in a breach of a still more important limitation of the constitution—the one which respects the power of the president to form treaties with the advice and consent of the senate.

By referring to the proceedings of the senate on this occasion, it appears that the president, in a short, unexplanatory message, stated to them, that, from the communications of our minister in Great Britain, our affairs with that court wore a serious aspect; that before we resorted to the last expedient, which had been the scourge of so many nations, he thought negotiation preferable, and nominated Mr. Jay as envoy extraordinary on that occasion. He said, his confidence in our minister resident there remained undiminished; but he still was of opinion, the measure was necessary; that such an envoy, going from among us at this time, would have fuller information of the state of things, and carry with him more effectually the sensibility and feelings of the people.

On this message being sent to the senate, it was very properly supposed, by some of the members of that body, that the president ought to have submitted to them the whole of the business upon which Mr. Jay was to have been sent; and a motion to that effect was brought forward, but negatived. Mr. Jay's appointment was consented to; and, as far as he understood to be the fact, he was absolutely sent to negotiate a treaty with Great Britain, without his instructions being submitted to the senate, or that body being acquainted with the president's intention to enter into a negotiation, which was ultimately to lead to the formation of a treaty of such immense consequence to every part of the union. He had been informed, and he believed his information was correct, that many of the members of the senate at that time were of opinion, Mr. Jay was sent for the purpose of obtaining compensation for the depredations in the West Indies; to demand the delivery of the posts, and the execution of the treaty of peace; and to require a stipu-



lation, that our vessels should not in future be liable to seizure or condemnation on any pretence. He was sure that this was the general opinion of the people in this part of the union; and, as he had observed, he understood it to be the opinion of the senate.

If this is the fact, that Mr. Jay's instructions for forming this treaty were not submitted to the senate, nor received their assent, he considered it as a matter of great importance indeed, and that required the most serious attention of the people, how far the constitution ever intended to authorize the president to enter into any negotiation with a foreign power, without his having first submitted his intentions and instructions to the senate and received their advice and assent, as well with respect to the necessity of such negotiation, as to the propriety of his instructions.

Mr. Pinckney said, his opinion clearly was, that the constitution gave no power to the president to commence a negotiation, without previously submitting his intentions and instructions to the senate, requiring their advice and receiving their assent. The words "by and with the advice and consent of the senate" admit no other explanation. He cannot be said to advise with them upon a measure, if he forms a treaty without their knowledge, and merely leaves to them the power of determining whether they will ratify it or not, after it has been solemnly concluded by the minister.

The true construction of this article, and the use the people of the union will one day require to be made of it, is, if the president thought a foreign negotiation necessary, that he should previously consult the senate, and be governed by their opinion, how far it would be proper, and upon what conditions, to proceed in it; and that if the senate, without the previous interference of the president, thought a negotiation proper, that they should advise it, and that the president should enter upon it. Although a contrary use had hitherto been made of this power, yet Mr. Pinckney said, that it well deserved the attention of the public, whether any other construction ought to be admitted; and that if a different use had been made of it, or if the article was doubtful, or open to any other meaning, whether it was not of greater consequence than any thing that had been agitated since the revolution, that these doubts should be removed, and the meaning he contended for, unequivocally given to the article. If, on the other hand, a power was to be given to the president to enter into negotiations with foreigners, without acquainting the senate with their nature, or the connections he wishes to form, and he should merely

leave to them the power of ratifying or not, it must at once be seen, that the agency, which the constitution intended to give the senate, in the formation of treaties, was in a great measure destroyed; and that as it was an unusual, and sometimes a hazardous thing, and productive of war, or other national calamities, for nations to refuse to ratify a treaty after it had been signed by the minister, who, it is to be supposed, was properly instructed, and acted agreeably to the instructions and wishes of those who sent him, there could be no doubt of improper treaties being **FORCED** upon the people.

If the senate were not to have a right to advise the president to a negotiation, which they considered as proper, without his previous interference—if no foreign connection was to take place but of his proposing—it then indeed became an enquiry of the highest importance, how far the people or the constitution of the United States ever intended to place all its foreign connections, all the treaties they may think necessary to their peace and security, to their general interests, or the regulation of their commerce, in the hands of one man: a man in whom, by giving him the right to nominate, they had already placed all the honors and offices of the government; and to which unexampled power in any thing that had even the appearance of a free government, an attempt, was here made to add the all-important one of concluding treaties without the knowledge of the senate, and leaving it to them merely to ratify: a power which, under an unwise use of it, may involve us in wars, abridge our rights, and would, as he should attempt to shew, by such treaties as Mr. Jay's, eventually destroy our navigation and commerce, and the right congress had to regulate them.

He would, upon a proper occasion, enter more largely into these subjects; he had at present mentioned them with a view to prove the necessity of the people's seriously attending to a treaty, in the commencement of which there have been two breaches of the constitution, and which, from the manner of its negotiation, must necessarily bring before the public a discussion of the important subjects which on this occasion he had only time very slightly to touch upon.

If, however, a treaty was considered as indispensable, and our trade was in so languid a state that it could not be advantageously carried on without the support of, or a connection with Great Britain, surely Mr. Jay was of all men the most improper that could have been appointed; the most unlikely to obtain those advantages which the humbled and distressed situation of that country gave us a right to expect,—nay, to demand; and without which it is the universal opinion of all the real

friends of their country, it was dishonorable, not to say treacherous, to have entered into any treaty with them.—His dislike to the French—his partiality for British government and measures—his opinions as secretary, and afterwards as judge, in favor of their claims, were well known. On these points the English minister was sure of his acquiescence in every demand. If he had attempted to say a word in favor of the claims, or even of allowances to his countrymen, his opponent had only to show him his own opinions, and his lips must have been instantly closed.

They could not but recollect his conduct, in the attempt he made in 1785, to barter away the rights of his country, in sacrificing the interests, and of course dismembering the western territory from the union, by ceding to Spain, for twenty-five years, the right to navigate the Mississippi, for which we were to receive a treaty that would not give a single benefit we did not before possess, and which it must always be her interest to allow. Standing, therefore, in this situation as a public man, he was so devoted to the interests of the British, and his opinions in favor of that country were so well known, that it was impossible for us, through such a negotiator, to form any but a treaty destructive to our commercial rights, ungrateful and injurious to our allies, and consequently degrading to our national character. However, good may sometimes arise out of evil. If he had not made this public exposure of his conduct and principles, he might one day have been brought forward, among others, as a candidate for our highest office.—But the general and deserved contempt which his negotiations have brought both his talents and principles into, will, he trusted, for ever secure his fellow citizens from the dangerous and unwise use which such a man would have made of the important powers vested in a president.

How far, under these circumstances, and many of them must have been known to him, it may have been prudent in the president to send a man who has shown himself so uninformed of the commercial interests of his country, and so miserably deficient in those talents which a negotiator required—to oppose him singly, and at their own court, to the talents, experience, and perhaps temptations of their ablest statesmen,—is one of those extraordinary occurrences in his conduct, which, considering the character, general good sense, and unshaken integrity of the president, is difficult to be accounted for.

Such was the negotiator; and such were the circumstances under which this treaty has been produced.

I am now, he said, to examine the treaty,—but as the report of the committee has just been read, it would be unnecessary, and occupy more of your time than you could spare, to enter into a particular discussion of every article; all that can be expected, at present, is to review its leading features, and state how far they militate against the true interests of our commerce.

The first article admits the return of all persons to this country, whose conduct has rendered them obnoxious, and whose cases have already been decided upon by the state legislatures: a measure repugnant to the feelings of our fellow citizens, and unnecessary in a treaty of commerce.

The second respects the posts. It is well known they are of consequence to the interests of the states concerned in the fur trade, and essential to the peace and security of the inhabitants bordering on the Indians in that neighbourhood. Although the treaty of peace expressly stipulated for their delivery twelve years ago, yet they have been retained, and still are held in defiance of the authority and remonstrances of our government: and, notwithstanding they ought to have been delivered at the time fixed by the treaty, they are now offered to be granted as a *douceur* for surrendering important privileges, and under circumstances which either give peculiar privileges to the British subjects, or give a right of citizenship to those who have been and may again become, from their neighbourhood to the Indians, dangerous enemies to the peace and trade of that part of the union.

It may easily be seen, from the care which the British minister has taken to word the 3d article, and the easy and ready concession which Mr. Jay has made to the British of every privilege they could think of inserting, that he has very nearly yielded to them almost every advantage that could flow to us from a trade with the Indians and the western territory.

The article which respects the recovery of debts, is at once as unnecessary as dishonorably burdensome to our government. It was a point upon which the creditors had long since made up their minds, and one which a very little firmness on the part of our minister, and attention to the interests of his constituents, would have induced them to relinquish; by far the greater number of cases had been settled by suit or compromise; and it seems to be calculated merely for the purpose of opening a dangerous and extensive door to claims on the treasury of the union; claims which, long since, have been laid aside, and many of which, particularly that part which respects the payment of interest, have originated in the most manifest injustice.

But on this subject Mr. Jay had pledged himself. Although he knew it would operate to the ruin almost entirely of that class which have been the greatest sufferers by the revolution, he meant the former merchants of America, such has been his constant and unremitted attention to the support of the British claims, that, as secretary for foreign affairs, as judge, and now as envoy, he has unceasingly and with marked industry and perseverance upon all occasions supported them, against the interests of his fellow citizens, the feelings of humanity, and the honor and gratitude of his country. It also creates a mode of adjudication unusual and unknown to the laws of this country; and leaves it to be determined by chance, whether the majority of the commissioners to be appointed may not be British subjects, and load our funds, at pleasure, with a very heavy debt.

The next point respects the depredations on our commerce in the West Indies, and the compensation it proposes. This was the subject which gave rise to Mr. Jay's mission; for, he said, he believed that had no depredations existed, no such appointment would have been made.—How far he has succeeded in his attempt to obtain compensation, or whether the mode he has adopted, will prove effectual, time alone can discover; at present it appears to be very doubtful, and to depend entirely upon chance. Each party are to appoint two commissioners, whose opinions will be previously well known, and who will carry with them into their adjudications all the passions and prejudices of those who appoint them—it will then depend entirely upon the fifth, who is to be chosen by lot, in whose favor the decision will be: whereas these depredations being notorious breaches of the law of nations, and insulting infringements of our neutrality, the demand should have been spirited and positive, the remedy speedy and complete; no alternative should have been offered; he should have required immediate satisfaction; if they had refused, he should have quitted their court, and left it to his country to have determined what other measures were necessary to pursue. But, instead of this, he has accepted a remote, expensive, and uncertain remedy; and, in return for their refusal of justice, in the most condescending manner has stipulated that all prizes brought in by our allies, and which are said to have been captured by privateers illegally equipped, or taken within our limits, shall be paid for upon certain and fixed principles.

As to the 12th article, which the senate have rejected, there appears but one sentiment throughout the union; there can be but one in the breast of every man of sense, spirit or honesty,

in every part of the world; that it is an infamous and degrading surrender of the rights and character of this country, and a mean and ungenerous desertion of the interest of our friends, the French, to whose supplies, at least in the articles they consider as of necessity in their present noble and unexampled struggle for freedom, we are bound by every tie of gratitude and honor to attend. To examine this article fully, state its inequalities, the restrictions it imposes, and the evils that must arise from it, are not within the limits of these observations; nor is it necessary, from the general detestation in which it is held by foreigners as well as citizens. That for the paltry allowance of being permitted to send vessels of 70 tons to the British West Indies, we are to give up the right to export West India produce, and even the cotton of American growth, to Europe, in our own vessels, is such a glaring and insolent attempt to abridge our rights and gratify the wishes of the British nation in checking our commerce, that, instead of carrying with him the feelings and sensibility of his countrymen, which were certainly sufficiently awake to the conduct of Great Britain, he must have entirely forgot their temper and firmness; he could not have remembered, that, however mild and obedient they generally were to laws founded in equality and a regard to their rights, yet that they loved their country, were attentive to its interests, and impatient of any insult on its government; and that sooner than submit to such ignominious shackles as those he had attempted to impose, however they might wish upon all honorable occasions to avoid them, they would rather risk the dangers and inconveniencies of a war.

He has, however, endeavoured immediately to follow this submissive and dishonourable article with one which he supposes, by having the appearance of a favor, will in some measure atone for its disgraceful concessions; this is the one which respects the trade with their East India settlements. To those who are unacquainted with it, this may at first have the appearance of a favor; but upon examination it will appear to be delusive. Our vessels are to be hospitably received in their ports, and allowed to trade in such articles *the importation and exportation of which are not prohibited*. It is well known that the commerce of Great Britain with her colonies and establishments in the East Indies, is entirely founded in a monopoly of all their valuable exports and productions; of course our vessels are prohibited from touching them, and can meet with little of consequence to induce them to go there; they can much more advantageously trade with the Chinese,

*who have for ages had so much wisdom as to give particular privileges to NO nations, but to open their ports equally to all, and keep the regulation and management of their commerce in their own hands.* Besides, there are different opinions on the nature and consequences of our trade to the East Indies; and it has frequently been represented by men of considerable knowledge and talents, that, situated as we are at present, and must be for many years, an extensive trade to the East Indies, is an injurious one; because, at an immense expense, we import from them nothing but articles of mere luxury, most of which, except tea, we could do very well without, or procure elsewhere, in exchange for our productions; and they take from us in payment scarcely any thing but specie.

As to those parts of the treaty which declare what articles are contraband of war, and which recognize a right to seize and detain our vessels by refusing to adhere to a maxim which we ought never to depart from, *that free bottoms make free goods*; they are injurious in some degree to every part of the union, but particularly so to this state, whose principal exports are provisions. It was indispensable to our interests that the right of searching our vessels on any pretence should have been given up; except in attempts to enter places which were considered as blockaded according to the law of nations.—Unless this is done, we must continually be involved in every war that takes place among the maritime powers of Europe.

We must give up becoming, as neutrals, their carriers, or supplying them, in time of scarcity, with provisions. If we are to consent to their having the right to search our vessels, or detain them on any condition, except the one above-mentioned, there is an end of any advantages we are ever to expect from being neutral, and our commerce is prostrated at the feet of maritime powers: principles which will justify all the depredations committed, or authorize similar, are at once established; and we have but one resource left, which is, to endeavour by every means we have in our power, to obtain such a navy as will give protection to our commerce, and weight to the demands of our government.

He said he had always been of opinion, and the experience of the present war confirmed it, that the growing commerce of the union required the establishment of a naval force; ten or twelve sail of the line, and a few frigates, would be sufficient to answer all our purposes. Our neighbourhood to the West Indies, the convenience of our ports, and the weight we could add to any scale, would always prevent any of the belligerent powers from invading our commerce or interfering

with its rights. Our Mediterranean trade would likewise be secured, and the advantages which would soon accrue to our citizens from having their commerce protected, as well in time of war as peace, would, in a few years, amply repay the expenses of the equipment.

Among the many improper parts of the treaty, he considered this as the most important, and the most seriously injurious to our commerce : and while they continued to insist upon the right to search and detain our vessels, if there had been no other objection, Mr. Jay should have refused to sign the treaty.

As to the 15th, which is a very important article of the treaty, he had endeavoured upon that to obtain the best mercantile information he could ; the result is this :—

The first clause places the vessels of America on the same footing with those of other foreign nations. This perhaps is as much as we could expect, consistent with their obligations to other nations ; but it ought to be understood, that by this rule, American vessels going to their European ports, pay from 15 to 20*l.* on a vessel of 150 to 200 tons, more than a British vessel. To counteract this well became the government of this country ; accordingly, the first congress under the new constitution, imposed a duty on the tonnage of all foreign ships, of 25 cents per ton.

The duty imposed on American ships in England was under the denomination of *double light money*, &c. and the debates in congress show the object of laying the 25 cents per ton, to be what is here mentioned. The next session of Congress, it being discovered that Great Britain had no inclination to treat with us on subjects of commerce,† a further duty was imposed on foreign tonnage, equal in the whole to 50 cents per ton. It was at the same time discovered, that American ships were fully adequate to the carrying all the foreign goods, West Indian, European, and Asiatic, necessary to the consumption of the country : Congress, therefore, passed a law, that on all foreign goods, imported in American ships from Europe or the West Indies, there should be a deduction of ten per cent on the amount of duties prescribed by law. They have since made the goods imported in American ships pay the whole duty, and foreign ships ten per cent. in addition.

It being clearly ascertained, that America could carry on its own India trade, the difference of duty on foreign ships, was,

† See the president's message, February 14, 1790.



in all India commodities as fifteen to ten, making, in effect, a total prohibition against foreigners in this trade.

Under these discriminating regulations, American commerce and navigation flourished beyond all former example, and almost to exceed belief. Any one, of common observation, may remark the difference in this town. By whose capital and influence, and under what flag, was the commerce of Charleston carried on, prior to 1789? At that time, there was hardly an American house in extensive trade; and there were not six ships under the American flag trading out of Charleston: now American merchants carry on all the trade, and they own more than sixty vessels of large size, and a much greater proportion of smaller vessels in the West India trade.

Our fellow citizens at the northward too, have had exclusively the India trade, by which, besides supplying our own citizens with Asiatic goods at one fourth the price they were before the revolution, they have exported them to the West Indies, and even to Europe, making thereby the balance of trade more favorable to the United States. These restrictions, favorable to American navigation and commerce, did not produce from any European power counter restrictions. The privy council of Great Britain charged a committee of lords, on the subject of trade, generally to report their opinion on these measures: they took the advice of merchants in the cities of London, Bristol, Liverpool, and Glasgow, and the result was, that in their opinion the trade with America was so important, that it ought not to be hazarded by harsh measures, and they recommended an acquiescence in the present restrictions, rather than to endeavour a removal of them by retaliation. Thus, then, the matter stood when Mr. Jay arrived in England; except that, owing to a contingency, America had so increased her navigation as, beyond all dispute, to be fully adequate to the carrying of the produce of the United States.

At this moment Mr. Jay concedes, in the second section of the 15th article, "But the British government reserves to itself the right of imposing on American vessels entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America, and also such duty as may be adequate to countervail the difference of duty now payable on the importation of European and ASIATIC goods, when imported into the United States, in British or American vessels."

In the last part of the 3d section of the same article it says, "It is agreed that the United States will not impose any new or additional tonnage duty on British vessels, nor increase the

now subsisting difference between the duties payable on the importation of any articles in British or American vessels." The operation of this article will be, that as British goods are generally shipped to America on credit, the condition of the credit will be, that then our (British) ships shall have the freight; and it is not an extravagant idea to presume, that the wealth of the British East India Company may be employed to crush the American merchants now in this trade, that they afterwards may enjoy the monopoly of it.

By treaties now existing with other nations, they are to be used, "as the most favored;" and having of right the same privileges of counteracting these discriminating duties, they will of course exercise it. The extent of these injurious consequences need not be predicted to an intelligent man; every one, even of the meanest capacity, must see in them the speedy and total destruction of American navigation, and of course our independent commerce.

There are other parts of the treaty, by which a number of articles are declared to be contraband, that we never consented to consider as such in any other treaties; and attempts are made to make even provisions come under this description.

By these means almost every article of exportation is declared contraband; and whenever there is a war between the maritime powers, the danger of seizure and condemnation to us will be as great as if we were actually at war ourselves.

He said he would only add, that the 23d, 24th, and 25th articles seem to carry with them very strongly the spirit of the 12th. In them the negotiator has endeavoured to render this country as unfriendly as he could to the French, to destroy the tranquillity and order of our sea-ports, and to brand our councils with ingratitude. In them he has displayed all his resentment to the only truly useful and valuable ally we have ever had—a nation which wishes to treat with us upon the equality which ought, and indeed must be the basis of every lasting treaty; for without equality few treaties can last.

Vattel, whose authority will not be doubted, says, that "Nations not being less obliged than individuals to have a regard to equity, they ought, as much as possible, to preserve equality in their treaties. When, therefore, the parties are in such a state as to obtain the same reciprocal advantages, the law of nature requireth their treaties should be equal, at least if there is not some particular reason to deviate from that equality; such, for instance, would be gratitude for a former benefit, in the hope of becoming unavoidably attached to a nation."

This is the language of the law of nations on the subject of the equality of treaties; and comparing the situation of the two countries, at present, it will not be said we were not in a state to obtain reciprocal advantages. We were certainly not bound, by gratitude for former benefits, to make sacrifices in their favor; nor has it ever appeared to be the disposition of our citizens to be so inviolably attached to Great Britain, as to grant them favors which they have never yielded to the more friendly powers of Europe, nor even to those to whom they are highly indebted for the establishment of their freedom. There must then be some other reasons for those uncommon surrenders, upon which the public are not yet sufficiently informed.

These are the outlines of the treaty on which you are to decide. The shortness of the time allowed for deliberations, and the necessity of dispatch, prevented, he said, his going as fully into its consequences as he would wish, or as he may hereafter do, should it ever come before our legislature. Indeed it is much to be lamented, that the legislatures of the different states were not in session at this important time, as the sentiments of the people, expressed through them, would come with more weight. But the president, to whom the address is to be made, will recollect, that by his postponing the consideration of the treaty from January to June, when none of the state legislatures were in session, the people have been forced to express their sentiments in this way, or to be silent on a subject which has been shown to be of the greatest consequence, and to now rest entirely with him. How awful must he feel his situation! The character, honor, and future commercial consequence of his country, depending entirely on his determination. If he refuses the treaty, he will be for ever entitled to the thanks and gratitude of his country, for having again saved it from the attempts of an experienced and ambitious rival. If he ratifies it, such will ever be the love of his country for his past services, they will always lament that a name, which has hitherto been so distinguished, should, at the close of its career, be voluntarily fixed to so injurious and degrading a measure.

As this is the first attempt which has been made by an unequal and improper treaty, to abridge our rights, and controul the power of congress in regulating our commerce, it becomes the duty of the friends of their country to express their sentiments, and to endeavor by every legal means to oppose its consequences, by stating its defects, and preventing, if possible, its adoption.—We should recollect, that treaties, when ratified, have higher authority than laws, because they are declared to be the supreme law of the land, and are irrevocable but by the

consent of all the parties to them. That, however destructive or injurious they may prove to be in their operation, they are without the sphere of legislative redress or interference: that while the right of regulating commerce remains unimpaired in both houses of congress, there can be no doubt of its being properly used. This the unexampled increase of our commerce for some years, clearly proves, and shows the impropriety of fettering it by treaties. Our policy was to have pursued the same measures; and in all cases where any nation invaded our rights and refused to do us justice, to have endeavored by restrictions, or, if necessary, retaliations, to obtain them.

But if, instead of leaving the regulation of commerce to congress, from whose use of it so many benefits have arisen, there should appear a disposition to interfere, by the means of treaties, which may hereafter operate to lessen our shipping, place us more in the power of foreigners, and destroy that competition which is so necessary to our obtaining a proper price for our staples; to all the states, particularly to those which are agricultural, it becomes a matter of the most serious concern. To no state can it be more so, than to South Carolina. We are entirely agricultural; and while our commerce is unfettered, and the present competition for our productions encouraged and protected by law—while we are sure of having American shipping in sufficient numbers to support our commercial rights—our planters will grow rich, the trade of our merchants become every day more extensive and respectable, and our country will be happy. But let it be once known, that, by the interference of an unfortunate and ruinous treaty, a foundation is laid for the diminution of our shipping; that we are not to enjoy the rights of neutrality or an independent commerce; that our vessels are to be liable to seizure, and we are again to look to other nations for the means of transportation, it will at once damp the hopes of our planters and merchants, and injure the value of their estates, check their enterprising views, and lessen the general happiness. In all enlightened countries, some portion of the happiness of the inhabitants must depend upon the ease with which they can acquire property, and the protection which their government is able to afford it. It is the general pursuit of mankind; and few people can be happy in any country, which either does not or cannot protect them, abroad as well as at home, in their privileges and property. The experience of the last six years has clearly proved that we possess the means of national happiness and prosperity within ourselves; and it will depend upon the

event of this treaty how far we are to cherish or part with them.

He said his opinion always had been, that *countries possessing within themselves the means of a growing and extensive commerce, particularly where they consisted of articles of the first necessity, such as provisions and raw materials necessary to the support and manufactures of other nations, ought not, except in very particular cases, to form treaties of commerce.* A nation with these advantages always may, by proper laws and restrictions, render its commerce more advantageous to its own citizens than foreigners. By being unfettered with treaties, it continually has it in its power to avail itself of any advantage the imprudence or situation of other countries may offer; and to always keep the staff of its commerce in its own hands. It is the opinion of those who are best informed on this subject, and in which every enlightened man must concur, that thus situated, commerce, excepting the conventions which regard the law of nations, ought not to be the object of negotiation.—That every power, in this regard, should depend only on itself. After having made such regulations as it judges best calculated for its situation, the nature of its riches and the industry of its inhabitants, let it, like England, have courage and constancy enough never to derogate from them in favor of strangers: all its policy should consist in a resolution never to think of forming treaties of commerce, until it finds itself in some happy circumstance, which may authorise it to demand prerogatives of foreign powers, without purchasing them even with equivalents.

These are principles which apply to all countries in similar situations; but to none more forcibly than to our own, particularly as it respects Great Britain.

Our commerce, as has been confessed by their committee of trade, is of the highest importance to Britain. From her European dominions we take her manufactures, and in return send her provisions and raw materials. The balance, which is generally against us, we pay in specie. So lucrative and important must this commerce be to her, that it certainly will always be her interest to continue and extend it without a treaty. From her West India islands, we receive what it is always in our power to obtain from the islands of the other powers; but in time of scarcity, which frequently occurs, they are unable to obtain provisions and lumber but from America. They are therefore more dependent on us than we are upon them, and our situation will soon force from them a much more advantageous trade than the treaty proposes.

Upon the whole of this business, it will be found that the treaty deserves the censure of every friend to his country, and every man else, who wishes to see its commerce extensive and flourishing. Even the most partial of Mr. Jay's friends confess it is a bad treaty, and they do not wish it ratified; but only contend that it is not just so infamous as it is generally supposed to be—But it may here be asked, has he accomplished a single object for which he was sent? Has he obtained complete satisfaction for the depredations in the West Indies, the delivering of the posts, compensation for their detention, and payment for the negroes carried away? Have they, in short, agreed to do any thing towards executing the treaty of peace, without receiving from us in return a surrender of important commercial rights? Instead of stipulating to make our commerce free, as other nations have done, to whom it is by no means so beneficial, they have expressly reserved to themselves the right of searching and carrying off vessels into their ports; while in return, we have granted them every thing they asked, and more than they could have expected, even if they had given us an advantageous treaty.

From what could this extraordinary surrender of our rights have sprung? Was it from ignorance? Was it from design? For the honor of our public councils he hoped not from the latter. Some of his friends have supposed it to arise from a want of perfect knowledge of our exports—That he did not know that in the United States cotton grew, or that they were ever in the habit of exporting West India produce to Europe. From whatever cause it may have arisen, he was sure it could not be conformable to his instructions. The president was too well acquainted with the interests of his country; he must have recollected that her dignity and his own character were too intimately connected: that he could not sacrifice the one without tarnishing the other. He certainly could never have given such instructions. We know we can trust him; and he wished that the event had proved that we could have trusted Mr. Jay as well.

He concluded with declaring his opinion of the treaty to be, that it was injurious to the commercial rights, and degrading to the character of his country; ungrateful to our allies; and that it was our duty by a respectful, but forcible address, to state our opinion, and request the president not to ratify it.

## Speech of Mr. J. Thompson,

*At a Meeting of the Citizens of Petersburg, convened August 1, 1795, to debate on the pending Treaty with Britain.*

THE magnitude of the present subject, and the danger of the present crisis, render this meeting peculiarly proper. We are called upon to examine a treaty, which involves the most precious rights, the most valuable interests, the commerce, the peace, and the honor of America. A concise historical detail will unfold the peculiar circumstances in which America stood prior to the embassy which produced this treaty. The king of Great Britain, who has sworn eternal enmity to republics, acceded at an early period to that combination, which has convulsed Europe, in attempting to stifle the liberty of France. Under the obnoxious pretext of attempting to starve thirty millions of men, he issued orders for intercepting the correspondence, and plundering the commerce of neutral nations. He had long viewed with indignant sorrow, the rapid progress which the Americans made, in spite of all the obstacles he could impose by commercial restrictions, or by flagrant violations of the treaty of 1783. The destruction of our rising commerce, the annihilation of our growing navigation, were the objects contemplated by these nefarious orders. They were executed with all the diligence, and all the oppression which rapacity can practice. A patriotic phalanx in congress proposed every expedient which wisdom could dictate, to obtain compensation for these injuries: but our illustrious president, animated by paternal solicitude for the welfare of America, gently insinuated to congress, that the subject was out of their jurisdiction, and appointed our chief justice to perform the honorable duty of declaring the indignation, and demanding the rights of an injured people. If stern aristocracy had not steeled his bosom against the generous sensations of patriotism—if gratitude, sensibility, and honor, had not been enveloped in the sable gloom of political prejudice, he must have been animated by a magnanimity worthy of his country. In the presence of venal pride and courtly profligacy, even at the footstool of the throne, he would have preserved the attitude of dignity, and spoken the language of truth. But basely apostatizing from republican principles, he stooped to offer the incense of flattery to a tyrant, the scourge of his country, the foe of mankind. After a long negotiation, in which he

happily practised the arts of diplomatic flattery, he has presented this treaty to his expecting country. It has received, in every article but one, the sanction of the senate. The conduct of that assembly has, indeed, been uniform. Since the establishment of the federal government, it has never deigned to adopt the sentiments of the people, or to communicate its own, except in the dignified form of laws and treaties. The majesty of that assembly has never been polluted by the vile feet of the *swinish* multitude. The existence of an aristocracy in this country is too often regarded as the chimera of some distempered enthusiast, or the fiction of some dangerous demagogue. I will appeal to the understandings of this audience, if the funding system has not organized a great aristocracy, which has usurped the dominion of the senate, which has often preponderated in the house of representatives, which proclaims itself in servile addresses to our supreme executive, in dangerous appointments, in monstrous accumulations of debt, in violation of the constitution, in proscriptions of democrats, and, to complete the climax of political infamy, in this treaty. I will ask, if the senate does not discover abject servility, in proposing the ratification of a treaty in which the fine expressions of friendship are prostituted by being used to a king? I will ask, if it was delicate, virtuous, or republican, to look upon the struggle of a great people for liberty, with cold indifference, to preserve a sullen neutrality, between freemen and despots, and to grant important privileges in peace and in war, to a government tottering under its own abuses, and feebly warring against liberty?

I will now consider each article of the treaty—I will compare it with the French treaty, and demonstrate to this meeting the necessity of expressing our detestation.

Prior to a discussion of this treaty, it may be proper to observe, that the sequestration proposed in congress, was preferable to the system of negotiation adopted by the executive. The compensation obtained, would have been instantaneous and adequate, the punishment inflicted, severe and just, the measure adopted, energetic and republican. This expedient was opposed, as leading to a war, by a party who conceal aristocracy under the gentle form of moderation. Whilst I declare the triumph of this party, I blush for my country. Yes—we hesitated to offend a proud king, who had captured our vessels, enslaved our fellow-citizens, ruined our merchants, invaded our territory, and trampled on our sovereignty. Shrinking from this measure, we prostrated ourselves before him, smiled in his face, flattered, and obtained this treaty.



The objections I shall make to it are, first, on account of the articles it does not contain; and, secondly, on account of the articles it does contain. It ought to have been expressly stipulated, that the king of Great Britain should interpose for us his good offices with the piratical states, or at least that he should not negociate a peace between Portugal and Algiers, which should again render those plunderers the tyrants of the ocean. His recent conduct in that quarter had very materially injured us—but no provision against a repetition of it, has been made by our minister. By the French treaty, concluded in the year 1778, in the tumultuous moments which attend the crisis of liberty, by a government so much despised for imbecility, this protection from Algerine corsairs, was expressly given by a king, from whom we had nothing to demand, and every thing to sue, and to whom we granted privileges much less important, than those we now grant.

A stipulation ought to have been insisted on for ample compensation for the detention of the western posts—a detention which has defrauded America of the immense profits of the fur trade, and which has produced a long, bloody, and disastrous Indian war.

A stipulation ought to have been made that British ships of war should protect American ships at sea. Although the articles relative to armed ships appear to be mutual; yet, since we have no armed ships, we receive no consideration for the privileges we grant theirs. Here another advantage is given to us by the French treaty, which this denies.

As I have been forced to anticipate the comparison between the two treaties, I will now continue it, and then state my objections to the articles contained in the treaty. The French are by treaty to pay no higher duties than the most favored nations pay. In the year 1778, we refused to admit even those generous allies into our ports upon the same terms with citizens. By this treaty the British are to be admitted on the same terms with American merchants. But the French, the Dutch, and the Spaniards, are entitled to pay no higher duties than the most favored nations. If this treaty is ratified, they will be obliged to pay no higher duties than American merchants. This treaty then almost annihilates the distinction between foreigners and natives; which we refused to relinquish in favor of our allies and protectors in the epoch of danger and infancy—Let this prove with what abject humility we prostrate before the British king.

By the 2d article of the French treaty, it is provided, that enemies' property shall not be taken out of American vessels—

the French cannot take out of American vessels British property. By this treaty it is provided, that enemies' property may be taken out of American vessels. The British may take out of American vessels French property. The object of this article was, to give the sanction of America to those atrocious robberies, which have wrested from the wretched West Indian exile, the last pittance of despairing poverty. By the French treaty, the carrying trade of enemies' property, not only from neutral ports to enemies' ports, but from enemies' ports to enemies' ports, is given us—By this treaty, that valuable source of wealth is denied us. By the French treaty it is declared that they shall not intercept American vessels bound with provisions to the ports of their enemies—By this treaty it is declared, that the British may intercept American vessels bound with provisions to the ports of their enemies. The French then cannot intercept American vessels bound with provisions to the ports of Great Britain; but the British can intercept American vessels bound with provisions to the ports of the French republic. The object of this article was to render America accessory to the nefarious scheme of exciting, by the agency of famine, insurrection and disorder, which may either exterminate or enslave the French. The object of this article was to render America a cowardly confederate, concealing, under the venerable form of friendship, the vilest malice. And shall this treaty dissolve the compact made by nature between the two republics, secured by feelings generous and inexpressible, guaranteed by all the soft sensibilities of the human heart? Shall this treaty force the Americans, the first people who sacrificed at the altar of liberty, to join the ruthless despots, who march to desolate France, to restore the altars of a barbarous superstition, and to extinguish the celestial light which has burst upon the human mind? O! my countrymen, when you are capable of such monstrous baseness, even the patriot will invoke upon you the contempt of ages.

The man who can hesitate, after this comparison, to pronounce that our ambassador, and the majority of our senate, prefer British principles and British connections, to French principles and French connections, must be timid in thought, and servile in sentiment. Yes, they prefer that mouldering, Gothic edifice, the British constitution, to the elegant temple of liberty, which philosophy has just erected in France.

The second article of this treaty permits the British subjects, settled in the western posts, to elect to remain British subjects at those posts, even after they are ceded. This article not only violates the sacred principles of the common law, which de-

clares that aliens cannot hold landed property, but operates as an indirect repeal of the late law of congress with respect to naturalization. If the president and senate have the power of repealing indirectly, or contravening even remotely, the laws, we are slaves! If they have not this power, a ratification will be an usurpation. Men, situated within the territory of the United States, and holding immense landed property, will, in case of a rupture with Great Britain, be bound to attack our defenceless fellow citizens situated near them, to join the hostile Indians, and raise the war whoop of savage cruelty. By this article, the western posts are ceded by America to Great Britain, until June, 1796. The power of ceding territory can only be exercised by congress. If this treaty is ratified, the president and senate will usurp it. I contend that the cession of those posts for one single day, was as unconstitutional as the cession of them for ten thousand years. Previous arrangements are to be made. What arrangements? Will not the British government propose some unreasonable arrangement, and then justify a further detention of the posts by our refusal to make it?

The third article, like every other, wants that reciprocity which should pervade the whole treaty. In return for the important privilege of trading to all our ports, subject to no higher duties than our own citizens, of bringing to our ports, in vessels of any description, the produce of any country on the face of the globe, we have the poor privilege of carrying to the ports of Great Britain the produce of our own country only, and of trading to the West Indies in fishing boats for two years, provided we covenant not to export any produce imported from those islands. This article is a regulation of commerce. The constitution gives the power of regulating commerce to congress. A ratification will be an usurpation of this power. This objection embraces almost the whole treaty. Boldly assuming the name of a compact concerning commerce, it disdains to render the constitution even the homage of hypocrisy. Here the absurdity of giving to the president and senate the power of making treaties becomes apparent. All treaties either regulate commerce, or cede territory, or conclude a war, by leaving things in *statu quo*. Treaties of the first and second kind cannot be constitutionally made by the president and senate—Treaties of the third kind hardly ever occur. Besides, our constitution absurdly gives to one body the power of making war, and to another the power of finishing it.

By the sixth article, the American government is to assume the payment of British debts. This assumption is unconstitu-

tional. All the power of the federal government with respect to debts, is given, by a concise article of the constitution, which declares that congress shall pay the debts of America. It is evident, that no stipulations with respect to debts, can constitutionally be made by the president and senate. This article manifests the aristocratical spirit, of which I have accused our late ambassador and the majority of the senate, by being unconstitutional, by accusing the state legislatures which emancipated America, of atrocious injustice, and by increasing that debt which has already created an influence independent of the people. It increases the ignominious tribute which we now pay to British speculators.

What article of the constitution authorises the president and senate to establish a judiciary colossus, which is to stand with one foot on America and with the other on Britain, and drag the reluctant governments of those countries to the altar of justice? What liberal article provides that the American government shall guarantee to all foreigners the payment of debts due from its citizens? Are Portuguese, and Dutch, and Spanish, and French merchants, to come in, liquidate their accounts, and obtain payment from the government? Or are our new friends, the British, to be preferred for their justice and generosity? Either the American government is to have remedy against the American citizens owing these debts, or not—If it is, then American citizens are to be ultimately bound by the awards of a tribunal composed partly of foreigners, partly salarized by a foreign potentate, erected neither by the constitution nor the legislature, invested with those discretionary powers, often tyrannically exercised, under the name of equity, proceeding without juries, by process, peculiar and anomalous, governed by no established rules, and elevated above appeals.—But if the government is not to have remedy, then the debts of solvent American citizens are to be discharged by general taxation, whilst they remain in splendid impunity.

By the seventh article, the claims of American merchants, arising from the spoliations, are to be liquidated by an arbitrary tribunal, and to be ratified, not by being paid, but by being funded. This will interweave in some measure the interests of the American commerce with the British government. British influence, already enormous, will be extended. A strong party of Americans will inculcate the most pusillanimous submission to that haughty government, and will view with malignant sorrow, the progress of that stream of opinion, which, in spite of learned sophistry, and powerful oppression, is destined to sweep its way.

The ninth article invades the rights of this commonwealth, by contemplating the case of Denny Fairfax.

The tenth article deprives congress of the power of sequestration; and if the president and senate can deprive it of this power, they can deprive it of all powers.

Since the senate have had the modesty to reject the twelfth article, a discussion of that is unnecessary, except to show that the servile condescension of our ambassador startled even them.

The twenty-first article attacks the sacred rights of expatriation. By this article, an American citizen who abjures his country, becomes a citizen of the French republic, and resides there twenty years, may be punished as a pirate, if he accepts a French commission. This article defines piracy. The power of defining piracy is given by the constitution to congress. If the treaty is ratified, the president and senate will usurp this power too.

The twenty-third and twenty-fourth articles are incompatible with the 17th of the French treaty. It is true, that a sweeping clause declares, that stipulations contained in this treaty, shall not affect treaties existing with other nations. But the king of Great Britain denies that the French are a nation. Besides, since the clause expresses nothing more than the law of nations implies, it is mere surplusage. It must be rejected, and then the repugnancy of the two treaties becomes manifest.

I will now recapitulate the usurpations which the president and senate will make if the treaty is ratified. They will usurp the power of making rules with respect to aliens, of ceding territory, of regulating commerce, of paying debts, of regulating duties, of establishing courts, and of defining piracies. The house of representatives will be degraded to a house of commons; summoned to answer an address, to regulate a few subjects of internal policy, and to vote money. But this treaty will not be ratified. The illustrious president, who administers our government, will not abandon, in his venerable old age, the generous maxims, the nice honor, the pure virtue, and the ardent patriotism, which have elevated him to save his country. He will view with indignation, the gigantic wickedness, which seeks, through the medium of a perfidious treaty, to render him an apostate, and to destroy at one blow, the commerce, the constitution, and the honor of his country.

## Wilmington Town Meeting.

August 4th, 1795.

**T**HIS afternoon, at 4 o'clock, agreeable to public notice, previously given, the citizens of this borough and its vicinity assembled together at the upper market house, to take into their consideration the treaty lately concluded by John Jay, between the United States and Britain.

We were much pleased to see so many of our aged and respectable citizens turn out on this all important occasion, with a number of our old patriots who had retired from public scenes, some of them from a considerable distance. The oldest people say, they never recollect to have seen such an universal convention of the inhabitants of this place, there being upwards of 500 people.

About 5 o'clock, they chose Dr. James Tilton for their chairman, and then adjourned to the Presbyterian meeting house, near the academy, which was so crowded that a great number had to remain outside.

Robert Coram was unanimously chosen their secretary.

Cæsar Rodney opened the business of the meeting, by moving the following resolution :

“Resolved, that it is the constitutional right of freemen, peaceably to assemble together, and express their opinions of public measures.”

He observed, that it would be unnecessary, he believed, to say any thing on the present occasion, in vindication of this resolution ; he had no doubt but that all those who surrounded him, were well convinced that this assembly emanated from the constitution ; and in his opinion it was one of the purest streams that flowed from that great fountain. (1) Every reflecting man must be deeply impressed with this important truth, that it was the unalienable right of the people to as-

(1) “ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” Article III, of the amendments to the federal constitution, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

femble and exprefs their sentiments; but at this time it was not only their right, but their bounden duty, when their all was at stake.

The chairman having put the question, the resolution was unanimously adopted.

It was then moved, that the treaty should be read, and a public discussion of its merits take place.

But it was observed by some, that the reading of it would take up too much time; that every body must be supposed now to be acquainted with its contents; and that there were many persons present, who had to return home some distance in the country.

A great number, however, declared that it was essentially necessary, to prevent any reflections being thrown on their proceedings, to have the treaty read, and to permit a free discussion on this occasion. The meeting at New York had been highly criminated on this very account; and they hoped, therefore, that the present assembly would have more prudence than to lay themselves open to the same aspersions which had been cast upon others.

The gentlemen having withdrawn their opposition, the motion was unanimously agreed to.

Whereupon the treaty was read by the secretary.

Mr. Rodney said he was not so anxious to express his own sentiments on this occasion, as he was to hear the opinion of a venerable patriot in that house, whose head had grown grey in the faithful discharge of his duties in the legislative, judicial, and executive departments of government.

John Dickinson then rose, and observed, that he had felt it his duty to appear on this momentous occasion, and publicly avow his sentiments concerning this treaty; but as the hand of age and infirmity was upon him, he hoped that some younger citizen than himself would take the labouring oar, and break the way, in order that the elder might the more easily follow. When that was done, the duty he owed to himself and his country, he said, would compel him to express his feeling on the present occasion.

MR. RODNEY said, that as it was the wish of the gentleman who had just sat down, that some younger person than himself should lead the way to this discussion, he would offer a few general observations on the treaty, which they had now fully and fairly before them, for their consideration. He did not intend to go through with it article by article; he only meant to touch slightly on some of the principal objections, and leave the rest to a more able hand; indeed it would be in vain to at-

tempt to notice every objection, for the subject of objection appeared to him to be exhaustless.

Before he proceeded to the immediate discussion of the treaty itself, he requested permission to make a few candid remarks upon what he thought (and surely, said he, in a free country, every man has a right to think, and a right to express his opinions, too) the extraordinary manner in which this treaty had been brought about. In the first place, at the very moment when the representatives of the people were deliberating on the best mode of obtaining redress and satisfaction for the injuries and insults we had sustained, and the grievances under which we then laboured; at that moment their proceedings were unfortunately arrested.

In the next place, the chief justice of the United States was appointed (without a resignation) to the important office of minister plenipotentiary and envoy extraordinary to the court of Britain; if these measures were not against the letter, they were surely against the spirit of the constitution. Besides, was it ever heard of by any one, that Mr. Jay was dispatched for the purpose of making a treaty with Britain? Was such a thing even whispered within the senate itself? (2) Then, unless the terms *advice* and *consent* in the constitution, can be construed to mean one and the same thing, the senate were simply called to give their *consent* to this treaty. What was the construction given to this part of the constitution, on a former occasion, when the minister of the French republic wished to form a new treaty between his nation and ours, on terms of generous reciprocity? Was he not informed by the secretary of state, that *the constitution of the United States rendered the advice of the senate essentially necessary on such an occasion; that they were not then in session; and that, therefore, he could enter into no negotiations on that subject?* (3)

(2) “ My confidence in our minister plenipotentiary in London, continues undiminished; but a mission like this, while it corresponds with the solemnity of the occasion, will announce to the world a solicitude for a friendly *adjustment of our complaints*, and a reluctance to hostility.” Extract from the president’s message.

(3) “ Mr. Genet, soon after his arrival, communicated the decree of the national convention, of February 15th, 1793, authorising their executive to propose a treaty with us, upon *liberal principles*, such as might strengthen the bonds of good will, which unite the two nations; and informed us in a letter of May 23d, that he was authorised to treat accordingly. THE SENATE BEING THEN IN RECESS, AND NOT TO MEET AGAIN TILL THE FALL, I APPRIEZED



He had two general objections to the treaty itself. He was one of those who thought it would be for the real interest of America to have no treaty at all with Britain; five years out of seven she had the sword unsheathed, and the temple of Janus open. As our object ought to be (said he) and I hope ever will be, peace, we should carefully shun all connection with such a nation, for fear of being involved in her quarrels: But at this time, when she was at war with the French republic, our generous and brave ally, who assisted us when struggling in the same cause, and when the flag of freedom drooped under the iron rod of oppression, it was the height of folly to form such a treaty with her: For even supposing France and Britain were equally indifferent to us (and who is there that hears me, whose bosom is so frozen with ingratitude, as to view them

MR. GENET, THAT THE PARTICIPATION IN MATTERS OF TREATY, GIVEN BY THE CONSTITUTION TO THAT BRANCH OF OUR GOVERNMENT, WOULD, OF COURSE, DELAY ANY DEFINITIVE ANSWER TO HIS FRIENDLY PROPOSALS. As he was sensible of this circumstance, the matter has been understood to lie over till *the meeting of the senate.*" Extract from Mr. Jefferson's letter to Mr. Morris, August 23d, 1793.

It may be useful to inform the people of America, what those *liberal principles* mentioned by Mr. Jefferson, were, in the treaty proposed by France, by inserting here the terms themselves.

National Convention, February 19, 1793.

Decrees as follows.

1. "That all the ports of the French colonies be open to vessels of the United States of America.

2. "That all produce exported or imported in American vessels, on going out or entering in the *colonies*, or in *France*, pay the same as that borne by French vessels."

National Convention, March 26, 1793

"The national convention, willing to obviate the difficulties which might arise relative to the execution of its decree of the 19th February last, concerning the United States of America; to grant new favors to that nation; and to treat it in its commercial concerns with the French colonies. in the same manner as the vessels of the republic, decrees as follows:

1. "From the day of the publication of the present decree in the French colonies of America, the vessels of the United States of sixty tons burden or under, laden with flour and provisions, as also with the articles of supplies specified in the 2d article of the arrest of the 30th of August, 1784, and with bacon, butter, salt salmon, and candles, shall be admitted into the harbours of the said colonies *exempt from all duties.*"

with equal indifference) a treaty so pointedly levelled at the French as this appears to be throughout, and which gives up to Britain privileges which will put it in her power so materially to injure them, might by the law of nations be construed a breach of that neutrality which we seem one and all to be so anxious to preserve.

Mr. Chairman (he proceeded) the omissions in this treaty are numerous and important. If the message of the president is to be taken as the ground-work of the envoy's instructions, and I think it ought, he was sent to procure a *friendly adjustment of our complaints*; (4) and amongst those complaints, what were the first? and which stared us foremost in the face? Our western posts had been detained from us ever since the peace, contrary to treaty; in consequence of which we had been exposed to a ruinous Indian war; property to an immense amount had been taken off by the British, in contravention of the same treaty; our sailors had been cruelly and unjustly pressed from on board our vessels, so that they were unable, for want of hands, to return, if liberty had been given them to depart. Are any damages obtained for the detention of the posts these thirteen years? No! Are any obtained for the blood of our fellow citizens lavished, and the treasures of the people spent in the Indian war? Or for the innocent women and children who have fallen a sacrifice to savage cruelty, and the murdering tomahawk and scalping knife? No! Is the property unjustly carried off by the British, stipulated to be paid for? No! Has any provision been made to secure our helpless seamen from being dragged from on board our merchant ships? No! After all the losses the mercantile interest has sustained on this very account, they have been still left to the mercy of a merciless nation.

The third article, giving the British the benefit of all our Atlantic ports and inland navigation, and entirely excluding us, on their part, from both, requires no comment; it will not, for I am sure it cannot, be contended that there is any reciprocity here.

That article should never have been admitted, which puts the stale claims of British creditors on a footing with our plain demands for the plunder of our merchants; on a footing, did I say? on a far better footing; for while in the one case, by a summary mode of procedure, our citizens are robbed of that

(4) See extract from the president's message in note 2.

constitutional right, a trial by jury, (5) deprived of which security, I would not take away the life of a sparrow, or even draw a single feather from its wing, and are compelled to appear before judges, a majority of whom may be British; in the other case, they are obliged to go through the tedious and expensive labyrinth of the law, in British courts of admiralty.

Mr. Chairman (added he) the great object, if I am not mistaken, of our government, has been to continue neutral during the war which at present convulses the greater part of Europe; and yet while we are struggling to preserve this happy situation, in order that the blessings of peace and plenty may pour in upon us, we find in this treaty all the rights of neutrality abandoned, and the axe laid to the root of the very tree from which we expected to gather such abundant fruit. The great principle of neutrality, so essentially necessary to the very existence of commerce, *that free bottoms shall make free goods*, is here given up; a principle, since the year 1780, established as the law of nations. I know, previous to that year, the arbitrary and superior power of Britain had ruled it otherwise; but then the empress of Russia, in conjunction with Sweden and Denmark, established the *armed neutrality*, the very second article of which recognized this principle, and in support of which Russia refers to her treaty with Britain in 1734, in which this principle is indisputably established. To these principles the commercial nations of Europe fully acceded—Agreeably to these principles, Britain afterwards uniformly conducted herself during the American war; and to these principles we have rigidly adhered in every treaty hitherto made, and the British themselves in their treaty with France in 1786. (6)

(5) “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.” Article IX of amendments to the federal constitution, &c.

(6) Articles of the armed neutrality.

I. “Neutral bottoms shall enjoy a free navigation, even from port to port, and on the coasts of the belligerent powers.

II. “All effects belonging to the subjects of the belligerent powers, shall be looked upon as free on board such neutral ships, excepting only such goods as are stipulated contraband.”

III. In support of this article, Russia refers to her treaty with Britain, in 1734, in which it is declared,

“The subjects of either party may freely pass, repass, and trade

A great number of articles, in all our other treaties, declared *not to be contraband*, are here expressly declared to be *contraband*. Nay, our very provisions, the only freight almost that we have for our vessels, are not excepted; in consequence of which, the British are at this moment seizing all our provisions bound to France, and will no doubt pay us a *very* reasonable mercantile profit for them. In short, there is nothing but unwrought iron and fir plank we can carry with safety. (7)

The constitution of the United States declares, that *congress* shall have the power of defining and punishing piracies; (8)

in all countries which now are, or hereafter may be, at enmity with the other of the said parties, places *actually* blocked up or besieged only excepted; provided they do not carry any warlike stores or ammunition to the enemy: *as for all other effects*, their ships, passengers and goods, shall be *free and unmolested*."

Indeed the British carried their ideas of free commerce, A. D. 1739, much farther. The following resolution then passed both houses of parliament, and was approved of by the king!

"Resolved, that the subjects of Great Britain have an evident and inviolable right to navigate in the American seas, as well in going to as in returning from any part of the dominions of his majesty; and that it is a manifest violation of this right, *to visit such vessels at open sea*, under pretext that they are freighted with contraband or prohibited merchandizes."

By the treaty between England and France, A. D. 1786, article XX, "It is stipulated, that every thing shall be deemed free, which shall be found on board the ships, belonging to the subjects of the respective kingdoms, although the whole lading, or part thereof, should belong to the enemies of their majesties."

(7) By the treaty between Britain and France, in 1786, article XXIII, "tin, iron, lead, copper, brass; all kinds of provisions which serve for sustenance and food to mankind, cordage, cables, sails, sail cloth, hemp, tallow, pitch, tar, rosin, anchors, ship masts, planks, timber of all kinds of trees, and all other things proper for building or repairing ships," are declared not to be contraband. The same specification of articles, not contraband, is made in our treaties with Holland, France, &c. But by Mr. Jay's treaty, article XVIII, "timber for ship building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally what may serve to the equipment of vessels," are declared expressly to be contraband; and provisions are left in jeopardy.

(8) Federal constitution, article I. section 1. "All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives."

but by this treaty, they are defined and punished without their consent; and although our treaty with France has the same clause in it, let it be remembered, that the old congress formed that treaty, and that their powers were competent to it. Under this article, while our defenceless sailors are dragged from on board our ships, which are left with the merchant's *all*, to perish on the ocean, and chained down in British vessels to fight against their friends; those Americans, who, from gratitude, or a love of liberty, engage in the cause of our ally on board their ships, if taken, are to be ignominiously hung!

He said, he had now touched on a few of the leading objections to the treaty; but, as he had before observed, it would be idle to attempt even to glance at them all; he should exhaust himself, and exhaust the audience too. These were his candid sentiments on the treaty at present; he was still however open to conviction, and called on the friends of the treaty, if any such there were within the walls, to come forward and support it, and point out its advantages; he declared he would, and he was sure that respectable meeting would likewise give them, a fair, patient and candid hearing, for he wished the treaty to receive a full and impartial trial. He hoped, that at all events, others would rise and express their opinions on a treaty, which, like the sword of Damocles, was hanging over their heads, suspended but by a hair; a treaty in which the lives, the liberties, and the fortunes of them all were deeply interested; a treaty fraught with more evils than Pandora's box, and which, if not written in the blood, would assuredly be written in the tears, of those innocent men who under it would be robbed of their property.

Mr. Dickinson then rose, and in a dignified, eloquent, and patriotic address, of near two hours in duration, discussed the subject of the treaty, the dangers and want of reciprocity whereof, he fully evinced.

After a short silence, the question was then put, "Does the treaty meet the approbation of this meeting?" It was unanimously determined in the negative.

On motion of Jacob Broom,

Resolved, That a committee of nine be appointed to draw up a memorial to the president of the United States, expressive of disapprobation of the said treaty, and requesting him to withhold his ratification therefrom.

Section 8. "The congress shall have power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations."

## THE COMMITTEE.

John Dickinson,	Archibald Alexander,
James Tilton,	John James,
Cæsar Rodney,	Joseph Warner,
Robert Coram,	Isaac Starr, sen.
Jacob Broom,	

The citizens then adjourned, to meet again, at the same place, on Saturday the 8th inst. at five o'clock P. M. to receive and consider the report of their committee.

## AUGUST 8.

The citizens of the borough of Wilmington, and its vicinity, assembled pursuant to adjournment, John Dickinson, of the committee, then read the report, in the following words, viz.

TO GEORGE WASHINGTON,

President of the United States,

*The Memorial of the Citizens of Wilmington, and its Vicinity, in the State of Delaware,*

Respectfully sheweth,

THAT your memorialists, gratefully recollecting your eminent services to these states, deeply impressed with esteem for the integrity uniformly evidenced by your conduct, and fully convinced of your sincere affection for your country, are persuaded, that it cannot be disagreeable to you, to know the sentiments of your fellow citizens, on questions which they believe to be of vast importance to them and their posterity, when, to withhold such information, might imply their assent to measures which they not only disapprove, but contemplate with distressing aversion, anxiety, and apprehension, and when the information being brought forward, may possibly, by the wisdom of government, be improved for the advancement of the commonwealth—

That, revering constitutional authority as the basis of peace and prosperity, and holding themselves in duty bound to support its decisions, even though they may have opposed their being made, they trust, that on the present occasion, they shall not be exposed to controversies respecting the legitimate exercise of that authority, nor be obliged, in supporting its decisions, to feel an adherence to duty almost as afflictive as a departure from it—

That for this deliverance, they confidently recur to that portion of neutrality, with which, by the constitution, you are invested, and in which they are so greatly, inseparably, and sacredly interested; and, encouraged by a retrospect to those actions whose tenor designates your character, while they submit to your consideration the following objections against the treaty, lately negotiated between Great Britain and these states, they ardently hope, your mind, moved by reasons itself suggests, or observations of others, will be satisfied, that in refusing to ratify it, you will promote the happiness of your constituents—

First. It unnecessarily draws into litigation the boundaries of these states, and establishes a mode of proceeding, by which they may be contracted, without the consent of the nation.

Second. It contains stipulations that ought not to be made without legislative authority.

Third. It fixes terms of commerce and navigation unreasonably advantageous to Great Britain, and highly injurious to these states.

Fourth. It subjects these states to an unjust and oppressive responsibility.

Fifth. It surrenders, on the part of these states, powers essential to national independence.

Sixth. It prejudicially changes the condition of these states, in reference to other nations.

Seventh. It abandons principles concerning the rights of neutrality, which, if duly regarded, must have an auspicious influence on the welfare of these states, and of mankind in general.

Eighth. It alters the position of these states relative to the belligerent powers, in favor of Great Britain, and to the detriment of France; thus relinquishing a declared impartiality, and hazarding the immunities belonging to such a situation.

Ninth. It is in collision with articles of the treaty between France and the United States of America.

Tenth. It exhibits these states to the world as not attentive to the obligations of friendship, gratitude, and public faith.

Eleventh. It is not founded on principles of real reciprocity.

Twelfth. It does not, with sufficient clearness, certainty, and security, provide for the surrender of "all the posts and places" mentioned in the second article, and hitherto detained in contravention, of the treaty of peace.

Thirteenth. It does not require satisfaction for "the property of the American inhabitants carried away," at the close of the late war, in manifest violation of that treaty.

Fourteenth. It does not adequately obtain redress for the notorious vexations and spoliations recently committed on the vessels and commerce of these states, nor guard against the like in future.

Fifteenth. It does not in any manner provide for the protection of American seamen against the flagrant aggressions constantly practised by the British government, in pressing them to serve on board its ships of war.

The memorial was then read by the secretary, and afterwards read and agreed to by paragraphs; and upon the main question, "Does this report meet the approbation of the meeting?" It was unanimously determined in the affirmative.

On motion,

Resolved, unanimously, that the said memorial, reported by the committee, be signed by them, and transmitted to the president of the United States.

Extract from the minutes,

ROBERT CORAM, secretary.

## REPLY OF THE PRESIDENT.

*United States, 14th August, 1795.*

John Dickinson, James Tilton, Cæsar Rodney, Robert Coram, Jacob Broom, Archibald Alexander, John James, Joseph Warner, and Isaac Starr, Esquires.

GENTLEMEN,

THE proceedings of a meeting in Wilmington, as contained in a memorial signed by you, and dated the 8th instant, I have received.

As the answer, which I have given, on a similar occasion, to the selectmen of Boston, is applicable to that memorial, I think it proper to transmit a copy thereof to you.

With due respect,

I am, Gentlemen,

Your most obedient,

Go. WASHINGTON.



Ezekiel Price, Thomas Walley, William Bordman, Ebenezer Seaver, Thomas Crafts, Thomas Edwards, William Lettle, William Scollay, and Jesse Putnam, Esquires—Selectmen of the town of Boston.

GENTLEMEN,

**I**N every act of my administration, I have sought the happiness of my fellow citizens. My system, for the attainment of this object, has uniformly been, to overlook all personal, local, and partial considerations; to contemplate the United States as one great whole; to confide, that sudden impressions, when erroneous, would yield to candid reflection; and to consult only the substantial and permanent interests of our country.

Nor have I departed from this line of conduct, on the occasion which has produced the resolutions contained in your letter of the 13th inst.

Without a predilection for my own judgment, I have weighed with attention, every argument which has, at any time, been brought into view. But the constitution is the guide which I never can abandon. It has assigned to the president the power of making treaties, with the advice and consent of the senate. It was doubtless supposed that these two branches of government would combine, without passion, and with the best means of information, those facts and principles upon which the success of our foreign relations will always depend; that they ought not to substitute for their own conviction the opinions of others; or to seek truth through any channel but that of a temperate and well informed investigation.

Under this persuasion, I have resolved on the manner of executing the duty before me. To the high responsibility attached to it, I freely submit: and you, gentlemen, are at liberty to make these sentiments known as the grounds of my procedure. While I feel the most lively gratitude for the many instances of approbation from my country, I can no otherwise deserve it, than by obeying the dictates of my conscience.

With due respect,

I am, Gentlemen,

Your obedient,

GO. WASHINGTON.

United States, 28th July, 1795.

## OBSERVATIONS

## On the constitutional Power to form Treaties.

*Extract from one of the Federal Farmer's Letters, dated January 10, 1788.*

ON a fair construction of the constitution, I think the legislature has a proper controul over the president and senate, in settling commercial treaties.—By one article, “the legislature shall have power to regulate commerce with foreign nations,” &c. and by another article, “the president, with the advice and consent of two-thirds of the senate, shall have power to make treaties.” These clauses must be considered together; and we ought never to make one part of the same instrument contradict another, if it can be avoided by any reasonable construction. By the first recited clause, the legislature has *the power*, that is, as I understand it, *the sole power*, to regulate commerce with foreign nations, or to make all the rules and regulations respecting trade and commerce, between our citizens and foreigners. By the second recited clause, the president and senate have power generally to make treaties.—There are several kinds of treaties, as treaties of commerce, of peace, of alliance, &c. I think the words “to make treaties,” may be consistently construed, and yet so as it shall be left to the legislature to confirm commercial treaties. They are, in their nature and operation, very distinct from treaties of peace and of alliance. The latter generally require secrecy; it is but very seldom they interfere with the laws and internal police of the country: to make them, is properly the exercise of executive powers: and the constitution authorizes the president and senate to make treaties, and gives the legislature no power directly or indirectly respecting these treaties of peace and alliance. As to treaties of commerce, they do not generally require secrecy; they almost always involve in them legislative powers; interfere with the laws and internal police of the country; and operate immediately on persons or property, especially in commercial towns: (*They have in Great Britain usually been confirmed by parliament:*) They consist of rules and regulations respecting commerce; and to regulate commerce, or to make regulations respecting commerce, the federal legislature, by the constitution, has the power. I do not see that any commercial regulations can be made in treaties, that will not infringe upon this power in the legislature. Therefore I infer, that the true construction is, that the president and senate shall make treaties; but all commercial treaties shall be subject to be confirmed by the Legislature. This construction will render the clauses consistent, and make the powers of the president and senate, respecting treaties, much less exceptionable.

*Defence of Mr. Jay's Treaty.*

## No. I.

**I**T was to have been foreseen, that the treaty which Mr. Jay was charged to negotiate with Great-Britain, whenever it should appear, would have to contend with many perverse dispositions, and some honest prejudices; that there was no measure in which the government could engage, so little likely to be viewed according to its intrinsic merits—so very likely to encounter misconception, jealousy, and unreasonable dislike. For this, many reasons may be assigned.

It is only to know the vanity and vindictiveness of human nature, to be convinced, that while this generation lasts, there will always exist among us, men irreconcilable to our present national constitution; embittered in their animosity in proportion to the success of its operations, and the disappointment of their inauspicious predictions. It is a material inference from this, that such men will watch, with lynx's eyes, for opportunities of discrediting the proceedings of the government, and will display a hostile and malignant zeal upon every occasion, where they think there are any prepossessions of the community to favour their enterprizes. A treaty with Great-Britain was too fruitful an occasion not to call forth all their activity.

It is only to consult the history of nations, to perceive, that every country, at all times, is cursed by the existence of men, who, actuated by an irregular ambition, scruple nothing which they imagine will contribute to their own advancement and importance: in monarchies, supple courtiers; in republics, fawning or turbulent demagogues, worshipping still the idol, power, wherever placed, whether in the hands of a prince or of the people, and trafficking in the weaknesses, vices, frailties, or prejudices of the one or the other. It was to have been expected, that such men, counting more on the passions than on the reason of their fellow citizens, and anticipating that the treaty would have to struggle with prejudices, would be dis-

posed to make an alliance with popular discontent, to nourish it, and to press it into the service of their particular views.

It was not to have been doubted, that there would be one or more foreign powers, indisposed to a measure which accommodated our differences with Great-Britain, and laid the foundation of future good understanding, merely because it had that effect.

Nations are never content to confine their rivalships and enmities to themselves. It is their usual policy, to disseminate them as widely as they can, regardless how far it may interfere with the tranquillity or happiness of the nations which they are able to influence.—Whatever pretensions may be made, the world is yet remote from the spectacle of that just and generous policy, whether in the cabinets of republics or of kings, which would dispose one nation, in its intercourses with another—satisfied with a due proportion of privileges and benefits—to see that other pursue freely, its true interest with regard to a third; though at the expense of no engagement, nor in violation of any rule of friendly or fair procedure. It was natural, that the contrary spirit should produce efforts of foreign counteraction to the treaty; and it was certain that the partizans of the counteracting power would second its efforts by all the means which they thought calculated to answer the end.

It was known, that the resentment produced by our revolution war with Great-Britain, had never been entirely extinguished, and that recent injuries had re-kindled the flame with additional violence. It was a natural consequence of this, that many should be disinclined to any amicable arrangement with Great-Britain, and that many others should be prepared to acquiesce only in a treaty which should present advantages of so striking and preponderant a kind, as it was not reasonable to expect could be obtained, unless the United States were in a condition to give the law to Great-Britain, and as, if obtained under the coercion of such a situation, could only have been the short-lived prelude of a speedy rupture to get rid of them.

Unfortunately, too, the supposition of that situation has served to foster exaggerated expectations; and the absurd delusion to this moment prevails, notwithstanding the plain evidence to the contrary, which is deducible from the high and haughty ground still maintained by Great-Britain against victorious France.

It was not to be mistaken, that an enthusiasm for France

and her revolution, throughout all its wonderful vicissitudes, has continued to possess the minds of the great body of the people of this country ; and it was to be inferred, that this sentiment would predispose to a jealousy of any agreement or treaty with her most persevering competitor—a jealousy so excessive, as would give the fullest scope to insidious arts to perplex and mislead the public opinion. It was well understood, that a numerous party among us, though disavowing the design, because the avowal would defeat it, have been steadily endeavouring to make the United States a party in the present European war, by advocating all those measures which would widen the breach between us and Great-Britain, and by resisting all those which would tend to close it; and it was morally certain, that this party would eagerly improve every circumstance which could serve to render the treaty odious, and to frustrate it, as the most effectual road to their favourite goal.

It was also known beforehand, that personal and party rivalships, of the most active kind, would assail whatever treaty might be made, to disgrace, if possible, its organ.

There are three persons prominent in the public eye, as the successor of the actual president of the United States, in the event of his retreat from the station, mr. Adams, mr. Jay, and mr. Jefferson.

No one has forgotten the systematic pains which have been taken to impair the well-earned popularity of the first gentleman. Mr. Jay, too, has been repeatedly the object of attacks with the same view. His friends, as well as his enemies, anticipated that he could make no treaty, which would not furnish weapons against him : and it were to have been ignorant of the indefatigable malice of his adversaries, to have doubted that they would be seized with eagerness and wielded with dexterity.

The peculiar circumstances which have attended the two last elections for governor of this state\*, have been of a nature to give the utmost keenness to party animosity. It was impossible that mr. Jay should be forgiven for his double, and, in the last instance, triumphant success; or that any promising opportunity of detaching from him the public confidence, should pass unimproved.

Trivial facts frequently throw light upon important designs. It is remarkable, that in the toasts given on the 4th of

\* New-York.

July, wherever there appears a direct or indirect censure of the treaty, it is pretty uniformly coupled with compliments to mr. Jefferson, and to our late governor, mr. Clinton, with an evident design to place those gentlemen in contrast with mr. Jay, and, decrying him, to elevate them. No one can be blind to the finger of party spirit, visible in these and similar transactions. It indicates to us clearly, one powerful source of opposition to the treaty.

No man is without his personal enemies. Pre-eminence even in talents and virtue is a cause of envy and hatred of its possessor. Bad men are the natural enemies of virtuous men. Good men sometimes mistake and dislike each other.

Upon such an occasion as the treaty, how could it happen otherwise, than that *personal enmity* would be unusually busy, enterprising, and malignant?

From the combined operation of these different causes, it would have been a vain expectation that the treaty would be generally contemplated with candour and moderation, or that reason would regulate the first impressions concerning it. It was certain, on the contrary, that however unexceptionable its true character might be, it would have to fight its way through a mass of unreasonable opposition; and that time, examination, and reflection, would be requisite to fix the public opinion on a true basis. It was certain that it would become the instrument of a systematic effort against the national government and its administration; a decided engine of party to advance its own views at the hazard of the public peace and prosperity.

The events which have already taken place, are a full comment on these positions. If the good sense of the people does not speedily discountenance the projects which are on foot, more melancholy proofs may succeed.

Before the treaty was known, attempts were made to prepossess the public mind against it. It was absurdly asserted, that it was not expected by the people, that mr. Jay was to make any treaty; as if he had been sent, not to accommodate differences by negotiation and agreement, but to dictate to Great-Britain the terms of an unconditional submission.

Before it was published at large, a sketch, calculated to produce false impressions, was handed out to the public, through a medium noted for hostility to the administration of the government.—Emissaries flew through the country, spreading alarm and discontent: the leaders of clubs were

every where active to seize the passions of the people, and pre-occupy their judgments against the treaty.

At Boston it was published one day, and the next a town-meeting was convened to condemn it, without ever being read ; without any serious discussion, sentence was pronounced against it.

Will any man seriously believe, that in so short a time, an instrument of this nature could have been tolerably understood by the greater part of those who were thus induced to a condemnation of it? Can the result be considered as any thing more than a sudden ebullition of popular passion, excited by the artifices of a party, which had adroitly seized a favourable moment to furorize the public opinion ; this spirit of precipitation and the intemperance which accompanied it, prevented the body of the merchants and the greater part of the most considerate citizens, from attending the meeting, and left those who met wholly under the guidance of a set of men, who, with two or three exceptions, have been the uniform opposers of the government.

The intelligence of this event had no sooner reached New-York, than the leaders of the clubs were seen haranguing in every corner of the city, to stir up our citizens into an imitation of the example of the meeting at Boston. An invitation to meet at the city-hall quickly followed, not to consider or discuss the merits of the treaty, but to unite with the meeting at Boston to address the president against its ratification.

This was immediately succeeded by a hand bill, full of invectives against the treaty, as absurd as they were inflammatory, and manifestly designed to induce the citizens to surrender their reason to the empire of their passions.

In vain did a respectable meeting of the merchants endeavour, by their advice, to moderate the violence of these views, and to promote a spirit favourable to a fair discussion of the treaty ; in vain did a respectable majority of the citizens of every description attend for that purpose. The leaders of the clubs resisted all discussion, and their followers, by their clamors and vociferations, rendered it impracticable, notwithstanding the wish of a manifest majority of the citizens convened upon the occasion.

Can we believe, that the leaders were really sincere in the objections they made to a discussion, or that the great and mixed mass of citizens then assembled, had so thoroughly mas-

tered the merits of the treaty as that they might not have been enlightened by such a discussion.

It cannot be doubted that the real motive to the opposition, was the fear of a discussion ; the desire of excluding light ; the adherence to a plan of surprize and deception. Nor need we desire any fuller proof of the spirit of party which has stimulated the opposition to the treaty, than is to be found in the circumstances of that opposition.

To every man who is not an enemy to the national government, who is not a prejudiced partizan, who is capable of comprehending the argument, and dispassionate enough to attend to it with impartiality, I flatter myself I shall be able to demonstrate satisfactorily in the course of some succeeding papers.—

1. That the treaty adjusts, in a reasonable manner, the points in controversy between the United States and Great-Britain, as well those depending on the inexecution of the treaty of peace, as those growing out of the present European war.

2. That it makes no improper concessions to Great-Britain, no sacrifices on the part of the United States.

3. That it secures to the United States equivalents for what they grant.

4. That it lays upon them no restrictions which are incompatible with their honor or their interest.

5. That in the articles which respect war, it conforms to the laws of nations.

6. That it violates no treaty with, nor duty towards any foreign power.

7. That compared with our other commercial treaties, it is, upon the whole, entitled to a preference.

8. That it contains concessions of advantages by Great-Britain to the United States, which no other nation has obtained from the same power.

9. That it gives to her no superiority of advantages over other nations with whom we have treaties.

10. That interests of primary importance to our general welfare, are promoted by it.

11. That the too-probable result of a refusal to ratify, is war, or what would be still worse, a disgraceful passiveness under violations of our rights, unredressed and unadjusted : and consequently that it is the true interest of the United States, that the treaty should go into effect.



It will be understood, that I speak of the treaty as advised to be ratified by the senate—for this is the true question before the public.

CAMILLUS.

No. II.

PREVIOUS to a more particular discussion of the merits of the treaty, it may be useful to advert to a suggestion which has been thrown out, namely, That it was foreseen by many, that the mission to Great-Britain would produce no good result, and that the event has corresponded with the anticipation.

The reverse of this position is manifestly true.

All must remember the very critical posture of this country, at the time that mission was resolved upon. A recent violation of our rights, too flagrant and too injurious to be submitted to, had filled every American breast with indignation, and every prudent man with alarm and disquietude. A few hoped, and the great body of the community feared, that war was inevitable.

In this crisis, two sets of opinions prevailed, one looked to measures which were to have a compulsory effect upon Great-Britain, the sequestration of British debts, and the cutting off intercourse wholly or partially between the two countries: the other to *vigorous preparations* for war, and *one more effort* of negotiation, under the solemnity of an extraordinary mission, to avert it.

That the latter was the best opinion, no truly sensible man can doubt; and it may be boldly affirmed, that the event has entirely justified it.

If measures of coercion and reprisal had taken place, war, in all human probability, would have followed.

National pride is generally a very untractable thing. In the councils of no country does it act with greater force, than in those of Great-Britain. Whatever it might have been in her power to yield to negotiation, she could have yielded nothing to compulsion, without self-degradation, and without the sacrifice of that political consequence, which, at all times very important to a nation, was peculiarly so to her at the juncture in question. It should be remembered, too, that from the relations

in which the two countries have stood to each other, it must have cost more to the pride of Great-Britain to have received the law from us than from any other power.

When one nation has cause of complaint against another, the course marked out by practice, the opinion of writers, and the principles of humanity, the object being to avoid war, is to precede reprisals of any kind, by a demand of reparation. To begin with reprisals is to meet on the ground of war, and puts the other party in a condition not to be able to recede without humiliation.

Had this course been pursued by us, it would not only have rendered war morally certain, but it would have united the British nation in the vigorous support of their government, in the prosecution of it: while, on our part, we should have been quickly distracted and divided. The calamities of war would have brought the most ardent to their senses, and placed them among the first in reproaching the government with precipitation, rashness, and folly, for not having taken every chance, by pacific means, to avoid so great an evil.

The example of Denmark and Sweden is cited in support of the coercive plan. Those powers, it is asserted, by arming and acting with vigour, brought Great-Britain to terms.

But who is able to tell us the precise course of this transaction, or the terms gained by it? Has it appeared that either Denmark or Sweden has obtained as much as we have done—a stipulation of reparation for the violation of our property, contrary to the laws of war?

Besides, what did Denmark and Sweden do? They armed, and they negotiated. They did not begin by retaliations and reprisals. The United States also armed and negotiated, and, like Denmark and Sweden, prudently forbore reprisals. The conduct of the three countries agreed in principle, equally steering clear of a precipitate resort to reprisals, and contradicting the doctrines and advice of our war party.

The course pursued by our government was then in coincidence with the example of Denmark and Sweden—and, it may be added, was in every view the wisest.

Few nations can have stronger inducements than the United States to cultivate peace. Their infant state in general—their want of a marine in particular, to protect their commerce, would render war, in an extreme degree, a calamity. It would not only arrest our present rapid progress to strength and prosperity, but would probably throw us back into a state of de-

bility and impoverishment, from which it would require years to emerge.

Our trade, navigation, and mercantile capital, would be essentially destroyed. Spain being an associate with Great-Britain, a general Indian war might be expected to desolate the whole extent of our frontier—our exports obstructed, agriculture would of course languish; all other branches of industry would proportionably suffer; our public debt instead of a gradual diminution, would sustain a great augmentation, and draw with it a large increase of taxes and burthens on the people.

But these evils, however great, were, perhaps, not the worst to be apprehended. It was to be feared, that the war would be conducted in a spirit which would render it more than ordinarily calamitous. There are too many proofs, that a considerable party among us is deeply infected with those horrid principles of jacobinism, which, proceeding from one excess to another, have made France a theatre of blood, and which, notwithstanding the most vigorous efforts of the national representation to suppress it, keeps the destinies of France, to this moment, suspended by a thread. It was too probable, that the direction of the war, if commenced, would have fallen into the hands of men of this description. The consequence of this, even in imagination, are such as to make any virtuous man shudder.

It was, therefore, in a peculiar manner, the duty of the government to take all possible chances for avoiding war. The plan adopted was the only one which could claim this advantage.

To precipitate nothing, to gain time by negotiation, was to leave the country in a situation to profit by any events which might turn up, tending to restrain a spirit of hostility in Great-Britain, and to dispose her to reasonable accommodation.

The successes of France, which opportunely occurred, allowing them to have had an influence upon the issue, so far from disparaging the merit of the plan that was pursued, serve to illustrate its wisdom. This was one of the chances which procrastination gave, and one which it was natural to take into the calculation.

Had the reverse been the case, the posture of negotiation was still preferable to that of retaliation and reprisal; for in this case, the triumphs of Great-Britain, the gauntlet hav-

ing been thrown by us, would have stimulated her to take it up without hesitation.

By taking the ground of negociation in the attitude of preparation for war, we at the same time carried the appeal to the prudence of the British cabinet, without wounding its pride, and to the justice and interest of the British nation, without exciting feelings of resentment.

This conduct was calculated to range the public opinion of that country on our side, to oppose it to the indulgence of hostile views in the cabinet, and, in case of war, to lay the foundation of schism and dissatisfaction.

But one of the most important advantages to be expected from the course pursued, was the securing of unanimity among ourselves, if, after all the pains taken to avoid a war, it had been forced upon us.

As on the one hand, it was certain that dissention and discontent would have embarrassed and enfeebled our exertions, in a war produced by any circumstances of intemperance in our public councils, or not endeavoured to be prevented by all the milder expedients usual in similar cases: So, on the other, it was equally certain, that our having ineffectually exhausted those expedients, would cement us in a firm mass, keep us steady and persevering amidst whatever vicissitudes might happen, and nerve our efforts to the utmost extent of our resources.

This union among ourselves, and disunion among our enemies, were inestimable effects of the moderate plan, if it had promised no other advantage.

But to gain time was of vast moment to us in other senses. Not a sea-port of the United States was fortified, so as to be protected against the insults of a single frigate.—Our magazines were, in every respect, too scantily supplied. It was highly desirable to obviate these deficiencies before matters came to extremity.

Moreover, the longer we kept out of war, if obliged to go into it at last, the shorter would be the duration of the calamities incident to it.

The circumstances of the injury of which we more immediately complain, afforded an additional reason for preceding reprisals by negociation. The order of the 6th of November, directed neutral vessels to be bro't in for *adjudication*. This was an equivocal phrase; and though there was too much cause to suspect that it was intended to operate as it did, yet there

Minian Edwards

was a possibility of misconstruction ; and that possibility was a reason, in the nature of the thing, for giving to the English government an opportunity of explaining before retaliations took place.

To all this it may be added, that one of the substitutes for the plan pursued, the sequestration of debts, was a measure no less dishonest than impolitic ; as will be shown in the remarks which will be applied to the 10th article of the treaty.

But is it unimportant to the real friends of republican government, that the plan pursued was congenial to the pacific character which is ascribed to it ? Would it have been more desirable that the government of our nation, outstripping the war-maxims of Europe, should, without a previous demand of reparation, have rushed into reprisals, and consequently into a war ?

However this may be, it is a well ascertained fact, that our country never appeared so august and respectable as in the position which it assumed upon this occasion.—Europe was struck with the dignified moderation of our conduct ; and the character of our government and nation acquired a new elevation.

It cannot escape an attentive observer, that the language, which, in the first instance, condemned the mission of an envoy extraordinary to Great-Britain, and which now condemns the treaty negotiated by him, seems to consider the United States as among the first rate powers of the world in point of strength and resources, and proposes to them a conduct predicated from that condition.

To under-rate our just importance, would be a degrading error. To over-rate it, may lead to dangerous mistakes.

A very powerful state may frequently hazard a high and haughty tone with good policy ; but a weak state can scarcely ever do it without imprudence. The last is yet our character ; tho' we are the embryo of a great empire. It is, therefore, better suited to our situation to measure each step with the utmost caution ; to hazard as little as possible, in the cases in which we are injured ; to blend moderation with firmness ; and to brandish the weapons of hostility only when it is apparent that the use of them is unavoidable.

It is not to be inferred from this, that we are to crouch to any power on earth, or tamely to suffer our rights to be violated. A nation which is capable of this meanness, will quickly have no rights to protect, or honour to defend.

But the true inference is, that we ought not lightly to seek or provoke a resort to arms; that, in the differences between us and other nations, we ought carefully to avoid measures which tend to widen the breach; and that we should scrupulously abstain from whatever may be construed into reprisals, till after the employment of all amicable means has reduced it to a certainty that there is no alternative.

If we can avoid a war for ten or twelve years more, we shall then have acquired a maturity, which will make it no more than a common calamity, and will authorise us, in our national discussions, to take a higher and more imposing tone.

This is a consideration of the greatest weight to determine us to exert all our prudence and address to keep out of war as long as it shall be possible; to defer, to a state of manhood, a struggle to which infancy is ill adapted. This is the most effectual way to disappoint the enemies of our welfare; to pursue a contrary conduct may be to play into their hands, and to gratify their wishes. If there be a foreign power which sees with envy or ill-will our growing prosperity, that power must discern that our infancy is the time for clipping our wings. We ought to be wise enough to see, that this is not a time for trying our strength.

Should we be able to escape the storm which at this juncture agitates Europe, our disputes with Great-Britain terminated, we may hope to postpone war to a distant period. This, at least, will greatly diminish the chances of it. For then there will remain only one power with whom we have any embarrassing discussions. I allude to Spain, and the question of the Mississippi; and there is reason to hope, that this question, by the natural progress of things, and perseverance in an amicable course, will finally be arranged to our satisfaction without the necessity of the dernier resort.

The allusion to this case suggests one or two important reflections. How unwise would it have been to invite or facilitate a quarrel with Great-Britain, at a moment when she and Spain were engaged in a common cause, both of them having, besides, controverted points with the United States. How wise will it be to adjust our differences with the most formidable of these two powers, and to have only to contest with one of them!

This policy is so obvious, that it requires an extraordinary degree of infatuation not to be sensible of it, and not to view with favour any measure which tends to so important a result.

This cursory view of the motives which may be supposed to have governed our public councils in the mission to Great-Britain, serves not only to vindicate the measures then pursued, but warns us against a prejudiced judgment of the result, which may, in the end, defeat the salutary purposes of those measures.

I proceed now to observe summarily, that the objects of the mission, contrary to what has been asserted, have been substantially obtained. What were these? They were principally,

1. To adjust the matters of controversy concerning the execution of the treaty of peace, and especially to obtain restitution of our western posts.

2. To obtain reparation for the captures and spoliations of our property in the course of the existing war.

Both these objects have been provided for; and it will be shown, when we come to comment upon the articles which make the provisions in each case, that it is a reasonable one, as good a one as ought to have been expected; as good a one as there is any prospect of obtaining hereafter; one which it is consistent with our honour to accept, and which our interest bids us to close with.

The provisions with regard to commerce, were incidental and auxiliary. The reasons which may be conceived to have led to the including of the subject in the mission, will be discussed in some proper place.

C A M I L L U S.

### No. III.

THE opposers of the treaty seem to have put invention on the rack, to accumulate charges against it, in a great number of cases, without regard even to plausibility. If we suppose them sincere, we must often pity their ignorance; if insincere, we must abhor the spirit of deception which it betrays. Of the preposterous nature of some of their charges, specimens will be given, in the course of these remarks; though, while nothing, which is colourable, will remain unattended to, it were endless to attempt a distinct refutation of all the wild and absurd things which are and will be said. It is vain to combat the vagaries of diseased imaginations. The monsters they engender, are no sooner destroyed, than new

legions supply their places. Upon this, as upon all former occasions, the good sense of the people must be relied upon; and it must be taken for granted, that it will be sufficient for their conviction, to give solid answers to all such objections as have the semblance of reason; that now, as heretofore, they will maintain their character abroad and at home, for deliberation and reflection, and disappoint those who are in the habit of making experiments upon their credulity, who, treating them as children, fancy that sugar-plumbs and toys will suffice to gain their confidence and attachment, and to lead them blindfold, whither soever it is desired.

In considering the treaty, it presents itself under two principal heads; the permanent articles, which are the first ten, and which, with some supplementary provisions, adjust the controverted points between the two countries; and the temporary articles, which are all the remaining ones, and which establish the principles of mutual intercourse, as to GENERAL navigation and commerce. The manner of the discussion will correspond with this natural division of the subject.

An objection meets the treaty at the threshold. It is said that our envoy abandoned the ground which our government had uniformly held, and with it our rights and interests as a nation, by acceding, in the preamble of the treaty, to the idea of terminating the differences between the two countries, "*in such a manner, as, without reference to the merits of their respective complaints and pretensions, may be best calculated to produce mutual satisfaction and good understanding.*"

It is observed, in support of this, that our government has constantly charged the first breaches of the treaty upon Great-Britain, in the two particulars of carrying away the negroes, and detaining the posts; that while the evacuation of New-York was going on, a demand of the surrender of the negroes was made by congress, through our commander in chief, which not being complied with, commissioners were sent, to ascertain the number carried away, with a view to a claim of compensation; that early and repeated applications were also made for the surrender of the Western Posts, which not only was not done, but it is proved by the circumstances, that orders were not given for it, according to the true intent of the treaty, and that there was, from the beginning, a design to infract, and a virtual infraction of the article with respect to this object. All this, it is alleged, has been the uniform language of our government, and has been demonstrated by Mr. Jefferson to be true, in his letter to Mr. Hammond, of the



29th of May, 1792; and it is asserted, that the ground ought not to have been given up by mr. Jay, because it was the standard of the mutual rights and duties of the parties, as to the points unexecuted of the treaty of peace.

A proper examination of these matters is therefore called for, not only by the specific objection which is made to the principle which is contained in the preamble, but by the influence which a right solution is calculated to have, in giving a favourable or unfavourable complexion to the whole plan of the adjustment.

It is true, as suggested, that our government has constantly charged as breaches of the treaty by Great-Britain, the two particulars which have been stated; but it is believed to be not true, that it has uniformly charged them as FIRST breaches of the treaty. Individuals may have entertained this idea. The state of Virginia seems to have proceeded upon it in some public acts; but as far as is recollected, that ground was never formally or explicitly taken by the government of the United States in the above-mentioned letter from mr. Jefferson to mr. Hammond, when, for the first time, an attempt was made to vindicate or excuse the whole conduct of this country, in regard to the treaty of peace, contrary, I will venture to say, to the general sense of well-informed men.

The most solemn act of our government on this head, is an address of congress to the different states, of the 13th of April, 1787.

This address admits contraventions of the treaty on our part; and instead of deriving either justification or extenuation of them from prior infractions by Great-Britain, urges the different states to a repeal of all contravening laws.

But if the fact, in this respect, were admitted to be, as stated by the adversaries of the treaty, it would not authorise their conclusion.

It would not follow, that, because the ground had been taken by the government, it ought to have been pertinaciously kept, if, upon fair examination, it had appeared to be not solid, or if an adherence to it would have obstructed a reasonable adjustment of differences.

Nations, no more than individuals, ought to persist in error, especially at the sacrifice of their peace and prosperity;—besides, nothing is more common, in disputes between nations, than each side to charge the other with being the aggressor or delinquent. This mutual crimination, either from the na-

ture of circumstances, or from the illusions of the passions, is sometimes sincere ; at other times, it is, dictated by pride or policy.—But in all such cases, where one party is not powerful enough to dictate to the other, and where there is a mutual disposition to avoid war ; the natural retreat for both is in compromise, which waves the question of first aggression or delinquency. This is the salvo for national pride ; the escape for mutual error ; the bridge by which nations, arrayed against each other, are enabled to retire with honor, and without bloodshed, from the field of contest. In cases of mutual delinquency, the question of the first default is frequently attended with real difficulty and doubt.—One side has an equal right with the other, to have and maintain its opinion.—What is to be done, when the pride of neither will yield to the arguments of the other ? War, or a waiver of the point, is the alternative. What sensible man, what humane man, will deny, that a compromise, which secures substantially the objects of interest, is almost always preferable to war on so punctilious and unmanageable a point ?

Reject the principle of compromise, and the feuds of nations must become much more deadly than they have hitherto been. There would scarcely ever be room for the adjustment of differences, without an appeal to the sword ; and, when drawn, it would seldom be sheathed but with the destruction of one or the other party. The earth, now too often stained, would then continually stream with human gore.

From the situation of the thing, and of the parties, there never could be a rational doubt, that the compromising plan was the only one on which the United States and Great-Britain could ever terminate their differences without war ; that the question, who was the first delinquent, would have been an eternal bar to accommodation, and consequently, that a dismissal of that question was a pre-requisite to agreement. Had our envoy permitted the negociation to be arrested by obstinacy on this head, he would have shown himself to be the diplomatic pedant, rather than the able negociator, and would have been justly chargeable with sacrificing to punctilio, the peace of his country. It was enough for him, as he did, to ascertain by a preliminary discussion, the impossibility of bringing the other party to concede to the point.

An impartial survey of the real state of the question, will satisfy candid and discerning men, that it was wise and politic to dismiss it. This shall be attempted.

It has been observed, that two breaches of the treaty of peace are charged upon Great-Britain; the carrying away of the Negroes, and the detention of the posts. It remains to investigate the reality of these breaches, and to fix the periods when they can be said to have happened.

As to the Negroes, the true sense of the article in the treaty of peace, which respects them, is disputed.

The words of the stipulation are (Art. 7.) that "his British majesty shall, with all convenient speed, and without *causing any destruction or carrying away any Negroes or other property of the American* inhabitants, withdraw all his armies, garrisons, and fleets, from the United States."

These terms admit of two constructions; one, that no Negroes, or other articles which *had been* American property, should be carried away; the other, that the evacuations were to be made, *without depredation*; consequently, that no new destruction was to be committed, and that Negroes, or other articles, which, at the time of the cessation of hostilities, *continued to be the property* of American inhabitants, unexchanged by the operations of war, should be forborne to be carried away.

The first was the construction which was adopted by this country; and the last is that insisted upon by Great-Britain.

The arguments which support her construction, are these:

I. The established laws of war give to an enemy the *use and enjoyment*, during the war, of all *real* property, of which he obtains possession, and the absolute ownership of all *personal* property which falls into his hands. The latter is called *booty*; and, except ships, becomes vested in the captors the moment they acquire a firm possession. With regard to ships, it seems to be a general rule of the marine law, that condemnation is necessary to complete investment of the property in the captor.

II. Negroes, by the laws of the states, in which slavery is allowed, are personal property. They, therefore, on the principle of those laws, like horses, cattle, and other moveables, were liable to become booty—and belonged to the enemy, as soon as they came into his hands. Belonging to him, he was free either to apply them to his own use, or to set them at liberty. If he did the latter, the grant was irrevocable, restitution was impossible. Nothing in the laws of nations, or in those of Great-Britain, will authorise the resumption of liberty, once granted to a human being.

III. The negroes in question were either taken in the course

of military operations, or they joined the British army upon invitation by proclamation. However dishonourable to Great-Britain the latter may have been, as an illiberal species of warfare, there is no ground to say that the strict rules of war did not warrant it ; or that the effect was not, in the one case, as well as in the other, a change of property in the thing.

IV. The stipulation relates to “Negroes or *other property* of the *American* inhabitants ;” putting Negroes on the same footing with any other article. The characteristic of the subject of the stipulation being *property of American* inhabitants, whatever had lost that character could not be the object of the stipulation. But the Negroes in question, by the laws of war, had lost that character ; they were therefore not within the stipulation.

Why did not the United States demand the surrender of captured vessels, and of all other moveables, which had fallen into the hands of the enemy ? The answer is, because common sense would have revolted against such a construction. No one could believe, that an indefinite surrender of all the spoils or booty of a seven year’s war was ever intended to be stipulated ; and yet the demand for a horse, or an ox, or a piece of furniture, would have been as completely within the terms “negroes and other property,” as a negro ; consequently, the reasoning which proves that one is not included, excludes the other.

The silence of the United States, as to every other article, is therefore a virtual abandonment of that sense of the stipulation which requires the surrender of negroes.

V. In the interpretation of treaties, things *odious* or *immoral* are not to be presumed. The abandonment of Negroes, who had been induced to quit their masters, on the faith of official proclamation, promising them liberty, to fall again under the yoke of their masters, and into slavery, is as *odious* and *immoral* a thing as can be conceived. It is odious, not only as it imposes an act of perfidy on one of the contracting parties ; but as it tends to bring back to servitude, men once made free. The general interests of humanity conspire with the obligation which Great-Britain had contracted towards the Negroes, to repel this construction of the treaty, if another can be found.

VI. But another, and a less exceptionable construction is found in considering the clause as inserted, for greater caution, to *secure evacuations without depredation*. It may be answered, that this was superfluous, because hostilities having ceased,

the stipulation to surrender, implied of itself, that it was to be done without depredation. But, to this the reply is, that a part of the clause manifestly contemplates the case of new depredations, and provides a guard against it, in the promise, that the evacuations shall be made without *causing any destruction*. To cause destruction is to do some new act of violence. This reflection destroys the argument drawn from the superfluity of the stipulation in the sense here given to it, and by showing that it must have such a sense in one part, authorises the conclusion, that the remainder of the clause has a similar sense. The connection of the two things, in parts of one sentence, confirms this inference.

These arguments certainly have great weight, and do not admit of easy refutation. It is a fact, too, that the opinions of some of the ablest lawyers of our own country, have, from the beginning, corresponded with the construction they enforce.

It is not enough for us to be persuaded, that some of the negociators, who made the peace, intended the article in our sense. It is necessary that it should be found in the instrument itself, and, from the nature of it, ought to have been expressed with clearness and without ambiguity. If there be real ambiguity in such a case, the odiousness of the effect will incline the scale against us.

It does not remove the difficulty, to say, that compensation for the negroes might have been a substitute for the thing.—When one party promises a specific thing to another, nothing but the thing itself will satisfy the promise. The party to whom it is made cannot be required to accept in lieu of it an equivalent. It follows, that compensation for the negroes would not have been a performance of the stipulation to forbear to carry them away; and therefore, if there be any thing odious in the specific thing itself, the objection to the interpretation which requires it, is not done away by the idea of substituting compensation. For the article does not admit such substitution, and its sense cannot be defined by what it does admit.

Some colour to our sense of the article results from these expressions in the same clause, “leaving in all fortifications, the *American* artillery that may be therein.”—But this expression is not of equivalent force to that of *property of American inhabitants*.—For example, suppose an American ship to have been captured and condemned, it might still be said of her, in a certain sense, this is an “*American ship*,” alluding to the

country of which she had been the ship; but it could not be said in any sense of her, this ship is American *property*, or the *property* of American inhabitants. The country of which a thing was, may often be used with aptness as a term of description of that thing, though it may have changed owners; but the term *property*, which is synonymous with *ownership*, can never be used in the present sense as descriptive of an ownership, which has ceased. Moreover, if the expressions in the two cases had been (as they are not) of equivalent force, it would not follow that they were to have the same meaning in both cases, being applied to different matters. For an odious consequence in one instance, would be a reason for rejecting a particular sense of a word or phrase, which would be proper in another, to which no such consequence was attached.

Let me now ask this question of any candid man. Is our construction of the article respecting the negroes, so much better supported than that of Great-Britain, as to justify our pronouncing with positiveness, that the carrying them away was a breach of the treaty?

To me it appears clear, that this must be considered, speaking favourably for us, as a very doubtful point, and that we cannot with confidence predicate a breach of the treaty by Great-Britain upon this event. If it was one, it happened in May 1783.

The affair of the western posts is now to be examined; that the detention of them, after the proper point of time for delivering them up, was a breach of the treaty, will not bear a dispute. But what that proper time was, is a serious question between the two parties.

Our government has contended, that the posts ought to have been surrendered with all convenient speed, after the provisional treaty took effect: and mr. Jefferson, who is much cited on the present occasion, has shown, by an ingenious and elaborate deduction of circumstances, that this was not only not done, but never intended.

But mr. Jefferson has not even discussed the question, whether the provisional or the definitive treaty was the act from which the obligation to perform was to date. This is an important omission; for Great-Britain affirms the definitive treaty to be the criterion.

As an original question, much might be said on both sides. The natural relation of the terms *provisional* or *preliminary* and *definitive* seems to exhibit the former as inchoate and imper-

fect, and to refer to the latter the conclusive obligatory force and legal perfection. There is room, therefore, to say, that all but the mere cessation of hostilities, or for the execution of which there is no precise point of time fixed in the preliminary articles, is referred to in the definitive treaty.

On the other hand, it may be argued, that a preliminary treaty is as much a national treaty as a definitive one, both being made by an equal and the competent authority; and that there is no good reason why those things which are sufficiently regulated by the preliminary, should not go into immediate and complete effect, equally as if regulated by the definitive treaty; or why the latter should be considered as any thing more than an instrument for adjusting points which may have been left open by the preliminary articles, and for giving more perfect form. Accordingly, there are examples of preliminary treaties going into mutual and full execution, though never followed by definitive treaties.

But, however this question may have stood on principle, the conduct of our government in the particular case has settled it against us, and has completely sanctioned the doctrine of Great-Britain.

If performance was to date from the provisional articles, this applies as well to us as to Great-Britain. It was incumbent upon congress to have notified the treaty, with the proper solemnities, to the different states and their citizens; to have made the recommendations stipulated by the fifth article; and to have enjoined the observance of all those things which we promised on our part. The nature of some of these stipulations rendered it particularly urgent that no time should be lost. But all was deferred till the ratification in this country of the definitive treaty. The 15th of January 1784, is the date of the act which attempts to carry the treaty into effect on our part. This then is a practical settlement by ourselves of the principle, that performance was to date from the definitive treaty.

It is no objection to the position, that our sea ports were previously evacuated; that was matter of mutual convenience; and though done, does not change the state of *strict obligation* between the parties. Even in the view of liberal and conciliating procedure, the prompt surrender of our sea ports are, for obvious reasons, very different things.

But our dilemma is this, if the delay of orders for evacuating the western posts, previous to the ratification of the definitive treaty, was, on the part of Great-Britain, a breach of treaty,

our delay to act upon the points stipulated by us till after that ratification, must have been equally a breach of treaty; and it must have been at least cotemporary with any breach that could have been committed by Great-Britain.

We are compelled then by our own example to agree with Great-Britain that she was not obliged to surrender the western posts till after the mutual ratification of the definitive treaty, and to abandon the superstructure, however soothing to our wishes, which has been reared upon a different foundation. If so, we must look to the period of the exchange of the ratification in Europe for the date of the orders for evacuating. I have not in my possession materials for fixing with accuracy that period; but considering the time of the ratification here, and the time of its probable arrival in England, we are carried to the latter end of April or beginning of May 1784; so that it is not till about May 1784, that we can charge upon Great-Britain a delinquency as to the surrender of the posts.

Having now examined the nature of the infractions of the treaty of peace charged upon Great-Britain with reference to dates, I shall, in the next number of this defence, trace some instances of infraction on our part with a like reference. The conclusions to be drawn from this comparison, if I mistake not, will greatly disconcert some articles of the prevailing creed on this head, and go far towards confirming what was preliminarily offered to evince the prudence of our envoy in relinquishing the favourite ground.

CAMILLUS.

No IV.

**A**N accurate enumeration of the breaches of the treaty of peace on our part, would require a tedious research. It will suffice to select and quote a few of the most prominent and early instances.

One of the earliest is to be found in an act of this state, for granting a more effectual relief in cases of certain trespasses, passed the 17th March, 1783. This act takes away from any person (subjects of Great-Britain of every description included) who had, during the war, occupied, injured, destroyed or received property, real or personal, of any inhabitant without



the British lines, the benefit of the plea of a military order; consequently the justification which the laws and usages of war give, and the immunity resulting from the reciprocal amnesty, which, expressly or virtually, is an essential part of every treaty of peace. To this it may be added, that it was considered by Great-Britain as a direct infraction of the 6th article of her treaty with us, which exempts all persons from prosecution "by reason of the part they might have taken in the war."

Mr. Jefferson, not controverting the point that the provisions of this act were contrary to the treaty, endeavours to get rid of the inference from it, by alleging three things.—1st. That it passed antecedently to the treaty, and so could not be a violation of an act of subsequent date.—2d. That the treaty was paramount to the laws of the particular states, and operated a repeal of them.—3d. That the exceptionable principle of this act was never sanctioned by the courts of justice, and in one instance (the case of Rutgers and Waddington in the mayor's court) was over ruled.

As to the first point, it is sufficient to answer, that the law continued to operate, *in fact*, from the time of the treaty till the 4th of April, 1787, when there was a repeal of the exceptionable clause, by an act of our legislature. During the period of four years, many suits were brought and many recoveries had; extending even to persons who had been in the military service of Great-Britain.

To the second point, these observations may be opposed.

The articles of the confederation did not, like our present constitution, declare that treaties were *supreme laws* of the land. The United States, under that system, had no courts of their own, to expound and enforce their treaties as laws. All was to depend upon the comparative authority of laws and treaties, in the judgment of the state courts.

The question, whether treaties were paramount to, and a virtual repeal of antecedent laws, was a question of theory, about which there was room for, and in this country did exist much diversity of opinion. It is notorious, that it has been strenuously maintained, that however a national treaty ought, in good faith, to be conclusive on a state, to induce a repeal of laws contrary to it; yet its actual laws could not be controverted by treaty, without an actual repeal by its own authority. This doctrine has been emphatically that of the party distinguished by its opposition to national principles.

And it is observable, that congress, not relying entirely up-

on the force of the treaty, to abrogate contravening laws, in their address already cited, urge the states to a repeal of those laws. It is likewise observable in respect to the very act under consideration, that the legislature of the state, in April, 1787, thought a positive repeal of the exceptionable clause necessary.

The complaints of a power, whose treaty with us was, *in fact*, violated by the operation of a state law, could never be satisfactorily answered by referring to a *theoretic abstract, disputed* proposition. Such a power might reply with irresistible force: "It is not for us to concern ourselves about the structure and meaning of your political constitutions, or the force of legal maxims deducible from the forms and distributions of power which you have adopted for your government. It is *the act* in which alone we are interested—you have stipulated *this* and *that* to us—your stipulation in practice is contravened. It is your duty to see that there are no impediments from conflicting authorities within yourselves, to an exact fulfilment of your promises. If you suffer any such impediment to exist, you are answerable for the consequences."

As to the third point, it is to be observed, that though there may have been no express formal decision of our courts, enforcing the exceptionable principle of the trespass act; yet there never was a decision of a supreme court against it; and it may not be amiss to remark incidentally, that the decision of the mayor's court, from which Mr. Jefferson is glad to derive an exculpation of our conduct, was the subject of a severe animadversion at a popular meeting in this city, as a judiciary encroachment on the legislative authority of the state. The truth on this point is, that according to the opinion of our bar, a defence under a military order was desperate, and it was believed that a majority of our supreme court bench would over-rule the plea. Hence in numerous cases where it might have been used, it was waved; and the endeavour on behalf of the defendants, was either to effect on collateral grounds, a mitigation of damages, or to accomplish the best compromises that could be obtained; even the suit of Rutgers and Waddington, after a partial success in the mayor's court, was terminated by a compromise, according to the advice of the defendant's council, owing to the apprehension of an unfavourable issue in the supreme court; and this, notwithstanding the defendant was a British subject.

Under these circumstances, which are faithfully represen-

ted, is it possible to doubt, that the act in question operated a breach of our treaty with Great-Britain? and this from the commencement of its existence? can we reasonably expect, that nations with whom we have treaties, will allow us to substitute theoretic problems to performances of our engagements, and will be willing to accept them as apologies for actual violations?

It is pertinent to remark, that the British commander in chief very early remonstrated against this act; but the remonstrance produced no effect.

Another act of the state of New-York may be cited as a violation of the treaty on our part, which must have been nearly cotemporary with that of the detention of the posts. Its date is the 12th of May, 1784; this act confirms, in express terms, all confiscations before made, notwithstanding errors in the proceedings, and takes away the writ of error upon any judgment previously rendered.

This was, in substance, a new confiscation; judgments which from error were invalid, were nullities. To take away the writ of error, by which their nullity might be established, was to give them an efficacy which they did not before possess; and, as to the operation, cannot be distinguished from the rendering of new judgments. To make voidable acts of confiscation valid and conclusive, is equivalent to new acts of confiscation. A fair execution of the treaty, required, that every thing in this respect should be left where it was, and forbade the remedying of defects, in former proceedings, as much as the restitution of new judgments.

Another, and an unequivocal breach of the treaty, is found in an act of South-Carolina, of March 26, 1784. This act suspends the recovery of British debts for nine months, and then allows them to be recovered only in four yearly installments, contrary to the express stipulation of the IVth article, "*that creditors on either side, shall meet with no lawful impediments to the recovery of the full value in sterling money, of all bona fide debts theretofore contracted.*"

It is idle to attempt to excuse infractions of this kind, by the pleas of distress and inability. This is to make the convenience of one party the measure of its obligation to perform its promises to another. If there was really an impossibility of payment, as has been pretended, there was no need of legislative obstruction; the thing would have regulated itself; and

the very interest of the creditor was a pledge, that no general evil could have resulted from allowing a free course to the laws. If such impediments could be justified, what impediments might not be justified? What would become of the article, the only one in the treaty, to be performed by us, of real consequence to Great-Britain?

This infraction by South-Carolina, was prior to that of the detention of the posts, by Great-Britain.

But the case of Virginia is still stronger than that of South-Carolina. There is evidence which cannot be disputed, that her courts, in defiance of the treaty, have constantly remained shut to the recovery of British debts, in virtue of laws passed during the war.

An act of her general assembly of the 22d June, 1784, after suggesting as breaches of the treaty by Great-Britain, the carrying off of the negroes, and the detention of the posts, after instructing her delegates in congress to request a remonstrance to the British court, complaining of those infractions, and desiring reparation, and after declaring that the national honour and interest of the citizens of that commonwealth obliged the assembly to *withhold their co-operation in the complete fulfilment of the said treaty*, until the success of the aforementioned remonstrance is known, or congress shall signify their sentiments touching the premises, concludes with the following resolution:

“That *so soon* as reparation is made for the foregoing infraction, or congress shall judge it indisputably necessary, such acts and parts of acts *passed during the late war*, as *inhibit the recovery of British debts*, ought to be repealed, and payment thereof made in such time and manner as shall consist with the exhausted situation of the commonwealth.”

The plain language of this resolution is, that there were acts passed during the war, which then actually inhibited the recovery of British debts; and that for the removal of this inhibition, a repealing act by the authority of Virginia was necessary.

However unfounded this position might have been in theory, here is conclusive evidence that the fact in Virginia was conformable to it; that her courts had been, ever since the peace, then were, and until a repealing law was passed, were likely to continue to be shut against the recovery of British debts.—When testimony of this kind was urged by the British minister, was it possible for our envoy to make any solid reply?

Who could be supposed to know better than the legislature of Virginia, the real state of the fact? When that legislature declared it to be as has been stated, who, or what could contradict it? With what truth has it been asserted, that "it was at all times *perfectly understood*" that treaties controuled the laws of the states?

Additional proof of the contrary is found in the subsequent conduct of Virginia. On the 12th of December, 1787, the state passed an act repealing all such acts or parts of acts of the state, as had prevented, or might prevent the recovery of debts due to British subjects, according to the true intent of the treaty; but with this proviso, that there should be a suspension of the repeal, 'till the governor, by advice of council had, by proclamation, notified that Great-Britain had delivered up the posts, and was taking measures for the further fulfilment of the treaty by delivering up the Negroes, or by making compensation for them. This denotes clearly, that in the opinion of the legislature of Virginia, there were acts of that state which *had prevented* and *might prevent* the recovery of debts according to the treaty.

It is observable, too, that the resolutions of June, 1784, do not even give the expectation of a complete repeal of the impeding laws, in the event of reparation of the breaches of treaty by Great-Britain. They only promise such a modification of them as would permit the payment in such *time and manner as should consist with the exhausted situation of the commonwealth*; that is, not according to the true intent of the treaty, but according to the opinion of the legislature of Virginia of the abilities of the commonwealth.

As the infraction which these proceedings of Virginia admit, resulted from acts passed during the war, it of course was coeval with the first existence of the treaty of peace, and seems to preclude the possibility of any prior breach by Great-Britain. It has been at least demonstrated, that the detention of the posts was not such prior breach; as there was no obligation to surrender 'till after the exchange of the ratifications of the definitive treaty in England.

I pass by the serious contraventions of the treaty in this important article of the debts, which are of a later date, because they do not affect the question of the first breach, though they are of great weight to demonstrate the obligation of the United States to make compensation.

The argument then, upon the whole, as to the question of the first breach, stands thus—It is a great doubt whether the

carring away of the negroes was at all a breach. If it was one, the trespass act of this state preceded it in date, and went into operation the very moment it was possible to issue process. The detention of the posts is subsequent to breaches of the article concerning their recovery of debts on our part. This, in the case of South Carolina, is determined by the date of her act (March 26, 1784) which is before the exchange of the ratifications of the definitive treaty could have taken place. In that of Virginia, it results from her own testimony, that impediments to the recovery of British debts, created by acts passed during the war, continued from the first moment of the peace until after the year 1787. Or if, contrary to our own interpretation, we are disposed to adhere to the provisional treaty, as the act from which performance was to date, we were guilty of a breach in not acting ourselves upon that treaty: a breach, which being co-temporary with the existence of the treaty, seems not to admit of any prior contravention. From all which it follows, that take what ground we will, we must be perplexed to fix the charge of the first breach of the treaty upon Great Britain.

Let the appeal be to the understandings and hearts of candid men—men who have force of mind sufficient to rescue themselves from the trammels of prejudice, and who dare to look even unpalatable truths in the face. Let such men pronounce, whether they are still satisfied that Great Britain is clearly chargeable with the first breaches of the treaty?—Whether they are not, on the contrary, convinced that the question is one so mixed and doubtful, as to render a waiver of it, even on the score of intrinsic merit, expedient on our part? and especially whether they can entertain a particle of doubt, that it was wiser to wave it than to suffer it to prove a final obstacle to the adjustment of a controversy on which the peace of their country was suspended? This was undoubtedly the alternative to our envoy. In the choice he made, the ultimate opinion of our enlightened country cannot fail to applaud his prudence.

C A M I L L U S.

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No. V.

THE discussion in the two last numbers has shown, if I mistake not, that this country by no means stands upon such good ground, with regard to the inexecution of the trea-

ty of peace, as some of our official proceedings have advanced, and as many among us have too lightly credited. The task of displaying this truth has been an unwelcome one. As long as a contrary doctrine was either a mere essay of polemical skill, or a convenient ingredient of negotiation, it was natural for those who thought differently of it, to prefer silence to contradiction; but when it is made the engine of great errors, of national conduct, of excessive pretensions, which forbid a reasonable accommodation, of national difference, and endangers rupture and war, on grounds which reason disapproves and prudence condemns, it becomes an indispensable duty to expose its hollowness and fallacy.—Reserve then would be a crime. The true patriot, who never fears to sacrifice popularity to what he believes to be the cause of public good, cannot hesitate to endeavour to unmask the error, though with the certainty of incurring the displeasure and censure of the prejudiced and unthinking.

The disposition to infract the treaty, which, in *several* particulars, discovered itself among us, almost as soon as it was known to have been made, was, from its first appearance, a source of humiliation, regret, and apprehension to those who could dispassionately estimate the consequences, and who felt a proper concern for the honor and character of the country. They perceived that besides loss of reputation, in must sooner or later lead to very serious embarrassments. They have been hitherto mistaken in no part of their anticipations; and if their faithful warning voice, now raised to check the progress of error, is as little listened to as when it was raised to prevent the commencement of it, there is too much cause to fear, that the experience of extensive evils may extort regrets which the foresight of an enlightened people ought to avert.

Citizens of United America! as you value your present enviable lot, rally round your own good sense! Expel from your confidence, men who have never ceased to misadvise you! Discard intemperate and illiberal passions! Aspire to the glory of the greatest triumph which a people can gain, a triumph over prejudice! Be just, be prudent! Listen impartially to the undiluted language of truth! And, above all, guard your peace with anxious vigilance against all the artful snares which are laid for it! Accompany me with minds open to conviction, in a discussion of unspeakable importance to your welfare!

Weigh well, as preliminary to further investigation, this momentous proposition. "PEACE, in the particular situation,

of this independent country, is an object of such GREAT and PRIMARY magnitude, that it ought not to be relinquished, unless the relinquishment be clearly necessary to PRESERVE our HONOUR in some UNEQUIVOCAL point, or to avoid the sacrifice of some RIGHT or INTEREST of MATERIAL and PERMANENT importance." This is the touchstone of every question which can come before us, respecting our foreign concerns.

As a general proposition, scarcely any will dispute it ; but in the application of the rule, there is much confusion of ideas ; much false feeling and falser reasoning. The ravings of anger and pride are mistaken for the suggestions of honor. Thus are we told in a delirium of rage, by a gentleman of South-Carolina, that our envoy should have demanded an *unconditional* relinquishment of the western posts as a right ; till which was granted, and until lord Grenville had given orders to lord Dorchester to that effect, *open to be sent to our president, to be by him forwarded*, he should not have *opened his lips about the treaty*. *It was prostituting the dearest rights of freemen, and laying them prostrate at the feet of royalty.*

In a case of incontestible, *mutual* infractions of a treaty, one of the parties is to demand, peremptorily of the other, an *unconditional* performance upon his part, by way of preliminary, and without negotiation. An envoy sent to avert war, carrying with him the clearest indications of a general solicitude of his country, that peace might be preserved, was, at the very first step of his progress, to render hostility inevitable, by exacting, not only what could not have been complied with, but what must have been rejected with indignation. The government of Great-Britain must have been the most abject on earth, in a case so situated, to have listened for a moment to such a demand. And because our envoy did not pursue this frantic course ; did not hold the language of an IMPERIOUS BASHAW to his TREMBLING SLAVE, he is absurdly stigmatised as having *prostrated the rights of freemen, at the foot of royalty*. What are we to think of the state of mind which could produce so extravagant a folly ? would a prudent people have been willing to have entrusted a negotiation which involved their peace to the author of it ? will they be willing to take him as their guide in a critical emergency of their affairs ?\*

\* No man in the habit of thinking well, either of mr. Rutledge's head or heart, but must have felt, at reading the passages of his speech, which have been published, pain, surprise, and mortification. I regret the occasion, and the necessity of animadversion.



True honor is a rational thing. It is as distinguishable from Quixotism, as true courage from the spirit of bravo. It is possible for one nation to commit so undisguised and unqualified an outrage upon another, as to render a negociation of the question dishonorable. But this seldom, if ever happens. In most cases, it is consistent with honor to precede rupture by negociation, and whenever it is, reason and humanity demand it. Honor cannot be wounded by consulting moderation. As a general rule, it is not till after it has become manifest, that reasonable reparation for a clear premediated wrong cannot be obtained by an amicable adjustment, that honor demands a resort to arms. In all the questions between us and Great-Britain, honor permitted the moderate course; in those which regard the inexecution of the treaty of peace, there had undoubtedly been mutual faults.—It was, therefore, a case for negociation and mutual reparation. True honor, which can never be separated from justice, even requires reparation from us to Great-Britain, as well as from her to us. The injuries we complain of in the present war, were also of a negociable kind. The first was bottomed on a controverted point in the laws of nations. The second left open the question, whether the principal injury was a designed act of the government or a misconstruction of its courts. To have taken, therefore, the imperious ground which is recommended, in place of that which was taken—would have been not to follow the admonitions of honor, but to have submitted to the impulse of passion and phrenzy.

So likewise, when it is asserted that war is preferable to the sacrifice of our rights and interests, this, to be true, to be rational, must be understood of such rights and interests as are certain, as are important, such as regard the honor, security, or prosperity of our country. It is not a right disputable, or of small consequence, it is not an interest temporary, partial and inconsiderable, which will justify, in our situation, an appeal to arms.

Nations ought to calculate as well as individuals; to compare evils; and to prefer the lesser to the greater; to act otherwise, is to act unreasonably; those who counsel it, are impostors or madmen.

These reflections are of a nature to lead to a right judgment of the conduct of our envoy in the plan of adjustment to which he has given his assent.

Three objects, as has appeared, were to be aimed at, on be-

half of the United States. 1st, Compensation for Negroes carried away. 2d, Surrender of the Western Posts. 3d, Compensation for spoliation during the existing war.

Two of these objects, and these in every view the most important, have been provided for; how fully will be examined hereafter. One of them has been given up (to wit) compensation for the Negroes.

It has been shown, as I trust, to the conviction of dispassionate men, that the claim of compensation for the Negroes, is, in point of right, a very doubtful one; in point of interest, it certainly falls under the description of partial and inconsiderable; affecting in no respect, the honor or security of the nation, and incapable of having a sensible influence upon its prosperity. The pecuniary value of the object is, in a national scale, trifling,

Not having before me the proper documents, I can only speak from memory. But I do not fear to be materially mistaken in stating that the whole number carried away, so ascertained as to have afforded evidence for a claim of compensation, was short of 3000 persons, of whom about 1300 were of sixteen years and upwards, men, women, and children. Computing these at an average of 150 dollars per head, which is a competent price, the amount would be 450,000 dollars, and not two or three millions, as has been pretended.

It is a fact, which I assert on the best authority, that our envoy made every effort in his power to establish our construction of the article relating to this subject, and to obtain compensation; and that he did not relinquish it, till he became convinced, that to insist upon it would defeat the purpose of his mission, and leave the controversy between the two countries unsettled.

Finding, at the same time, that the two other points in dispute could be reasonably adjusted, is there any one who will be rash enough to affirm, that he ought to have broken off the negotiation on account of the difficulty about the Negroes? Yes! there are men, who are thus inconsiderate and intemperate! But, will a sober reflecting people ratify their sentence?

( *To be Continued.* )

T H E

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SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.

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# C O N T E N T S.

1.	<i>CAMILLUS, No. V.—continued</i>	75
2.	—————No. VI.	78
3.	—————No. VII.	82
4.	—————No. VIII.	90
5.	<i>Impressment of American Seamen at Jeremie, by the Commander of the Hermione, July 4, 1795</i>	98
6.	<i>Breach of the Laws of Neutrality, by the Commander of the Africa, August 1st, 1795</i>	100
7.	<i>Resolutions of the Citizens of Petersburg, August 1st, 1795</i>	102
8.	<i>Caius's Address to the President of the United States, July 21st, 1795</i>	106
9.	<i>Cato, No. I.</i>	114
10.	— No. II.	119
11.	<i>Address of a Number of Citizens of Philadelphia to the President of the United States</i>	122
12.	<i>President's Answer to the Address</i>	125
13.	<i>Dissent of a Number of Citizens of Boston, from the Proceedings of their late Town-Meeting</i>	126
14.	<i>Dissent of a Number of Citizens of Trenton from the Proceedings of their late Town-Meeting</i>	127
15.	<i>Proceedings at Trenton, August 13th, 1795</i>	128
16.	<i>Proceedings of the Boston Chamber of Commerce, August 11th, 1795</i>	129
17.	<i>Resolutions of the Citizens of the Borough of York (Pennsylvania) August 17th, 1795</i>	130
18.	<i>Carolinienfis</i>	131
19.	<i>Resolutions of the Citizens of Richmond, July 29th, 1795</i>	133
20.	<i>Report of the Committee chosen by the Citizens of Savannah, July 29th, 1795</i>	134
21.	<i>Resolutions of the Inhabitants of Bordenton, Crosswicks, Black Horse, and Reckless Town, August 8th, 1795</i>	139
22.	<i>An Essay on Jacobinical Thinkers</i>	141
23.	<i>Remarks on the 11d Article of Mr. Jay's Treaty</i>	143

## CAMILLUS—No. V.—Continued.

**W**HAT would such a people have said to our envoy, had he returned with this absurd tale in his mouth! "Countrymen! I could have obtained the surrender of your posts, and an adequate provision for the reparation of your losses by unjust captures—I could have terminated your controversy with Great Britain, and secured the continuance of your peace, but for one obstacle, a refusal to compensate for the negroes carried away; on this point the British government maintained a construction of the treaty different from ours, and adhered to it with inflexibility. I confess, that there appeared to be much doubt concerning the true construction: I confess, also, that the object was of inconsiderable value. Yet it made a part of our claims; and I thought the hazards of war preferable to a renunciation of it."

What would his adversaries have replied to him on such an occasion? No ridicule would have been too strong, no reproach too bitter. Their triumph would have been complete: for he would have been deservedly left without advocate, without apologist.

It cannot admit of a serious doubt, that the affair of the negroes, was too questionable in point of right, too insignificant in point of interest, to have been suffered to be an impediment to the immense objects which were to be promoted by an accommodation of differences acceptable in other respects. There was no general principle of national right or policy to be renounced. No consideration of honor forbid the renunciation, every calculation of interest invited to it. The evils of war for one month would outweigh the advantage, if at the end of it there was a certainty of attainment.

But was war the alternative? Yes, war or disgrace.

The United States and Great Britain had been brought to issue. The recent spoliations on our commerce, superadded to the evils of a protracted Indian war, connected with the detention of the western posts, and accompanied with indications of a design to contract our boundaries, obstructing the course of our settlements and the enjoyment of private rights, and producing serious and growing discontent in our western country, rendered it indispensable, that there should be a ser-

tlement of old differences, and a reparation of new wrongs ; or, that the sword should vindicate our rights.

This was certainly, and with reason, the general sense of our country, when our envoy left it. There are many indications that it was the opinion of our government ; and it is to be inferred, that our envoy understood the alternative to be as has been stated.

Indeed what else could be contemplated ? after the depredations which had been committed upon our commerce, after the strong sensibility which had been discovered upon the occasion in and out of our public councils, after an envoy extraordinary had been sent to terminate differences and obtain reparation ; if nothing had resulted, was there any choice but reprisals ? should we not have rendered ourselves ridiculous and contemptible in the eyes of the whole world, by forbearing them ?

It is curious to observe the inconsistency of certain men. They reprobate the treaty as incompatible with our honor, and yet they affect to believe an abortion of the negociation would not have led to war. If they are sincere, they must think that national honor consists in perpetually railing, complaining, blustering, and submitting. For my part, much as I deprecate war, I entertain no doubt that it would have been our duty to meet it with decision, had negociation failed ; that a due regard to our honor, our rights and our interests would have enjoined it upon us. Nor would a pusillanimous passiveness have saved us from it. So unsettled a state of things would have led to fresh injuries and aggravations ; and circumstances, too powerful to be resisted, would have dragged us into war. We should have lost our honor without preserving our peace. Nations in similar situations have no option but to accommodate differences, or to fight. Those which have strong motives to avoid war, should, by their moderation, facilitate the accommodation of differences. This is a rule of good sense, a maxim of sound policy.

But the misfortune is, that men will oppose imagination to fact. Though we see Great Britain predominant on the ocean ; though we observe her pertinaciously resisting the idea of pacification with France, amidst the greatest discouragements ; though we have employed a man whose sagacity and integrity have been hitherto undisputed, and of a character far from flexible, to ascertain what was practicable ; though circumstances favored his exertions ; though much time and pains were bestowed upon the subject ; though there is not only his testimony, but the testimony of other men who were immediately on

the scene, and in whom there is every reason to confide, that all was attained which was attainable : yet we still permit ourselves to imagine, that more and better could have been done, and that by taking even now a high and menacing tone, Great Britain may be brought to our feet.

Even a stile of politeness in our envoy has been construed to his disadvantage. Because he did not mistake strut for dignity, and rudeness for spirit ; because he did not, by petulance and asperity, inflame the pride of the British court against the success of his mission, he is represented as having humiliated himself and his nation. It is forgotten that mildness in the manner, and firmness in the thing, are most compatible with true dignity, and almost always go further than harshness and stateliness.

Suppositions that more could be done by displaying, what is called, greater spirit, are not warranted by facts. It would be extremely imprudent on that basis, to trust ourselves to a further experiment—to the immense vicissitudes in the affairs of Europe, which from moment to moment may essentially vary the relative situations of the contending parties. If there ever was a state of things which demanded extraordinary circumspection, and forbade a spirit of adventure, it is that of the United States at the existing juncture, viewed in connection with the present very singular and incalculable posture of Europe.

But it is asked, to avoid Scylla, may we not run upon Charybdis?—If the treaty should preserve our peace with Britain, may it not interrupt it with France?—I answer, that to me there appears no room for apprehension. It will be shewn in the course of the discussion, that the treaty interferes in no particular with our engagements to France, and will make *no alteration whatever in the state of things between us and her*, except as to the selling prizes in our ports, which, not being required by treaty, was originally permitted merely because there was no law to forbid it, and which being confined to France was of very questionable propriety on the principles of neutrality, and has been a source of dissatisfaction to the other belligerent powers. This being the case, no cause of umbrage is given to France by the treaty, and is as contrary to her interest as to inclination, wantonly to seek a quarrel with us. Prostrate indeed were our situation, if we could not, without offending France, make a treaty with another power, which merely tended to extinguish controversy, and to regulate the rules of commercial intercourse, and this not only without violating any duty to France, but without giving any preference to another. It is astonishing that those who affect so much nicety about national

honor, do not feel the extreme humiliation of such an idea. As to the denomination of alliance with Great Britain which has been given to the treaty, it is an insult to the understandings of the people, to call it by such a name. There is not, a title of it which warrants the appellation.

CAMILLUS.

No. VI.

**T**H E R E is one more objection to the treaty for what it does not do, which requires to be noticed. This is an omission to provide against the impressment of our seamen.

It is certain that our trade has suffered embarrassments in this respect, and that there have been abuses which have operated very oppressively upon our seamen ; and all will join in the wish that they could have been guarded against in future by the treaty.

But it is easier to desire this, than to see how it could have been done. A general stipulation against the impressment of our seamen would have been nugatory, if not derogatory. Our right to an exemption is perfect by the laws of nations, and a contrary right is not even pretended by Great Britain. The difficulty has been, and is, to fix a rule of evidence, by which to discriminate our seamen from theirs, and by the discrimination to give ours protection, without covering theirs in our service. It happens that the two nations speak the same language, and in every exterior circumstance closely resemble each other ; that many of the natives of Great Britain and Ireland are among our citizens, and that others, without being properly our citizens, are employed in our vessels.

Every body knows, that the safety of Great Britain depends upon her marine. This was never more emphatically the case, than in the war in which she is now engaged. Her very existence as an independent power, seems to rest on a maritime superiority.

In this situation, can we be surprised that there are difficulties in bringing her to consent to any arrangement which would enable us, by receiving her seamen into our employment, to detain them from her service? Unfortunately, there can be devised no method of protecting our seamen which does not involve that danger to her. Language and appearance, instead of being a guide, as between other nations, are



between us and Great Britain, sources of mistake and deception. The most familiar experience in the ordinary affairs of society, proves, that the oaths of parties interested cannot be fully relied upon. Certificates of citizenship, by officers of one party, would be too open to the possibility of collusion and imposition, to expect that the other would admit them to be conclusive. If inconclusive, there must be a discretion to the other party which would destroy their efficacy.

In whatever light they may be viewed, there will be found an intrinsic difficulty in devising a rule of evidence, safe for both parties, and consequently, in establishing one by treaty. No nation would readily admit a rule which would make it depend on the good faith of another, and the integrity of its agents, whether her seamen, in time of war, might be drawn from her service, and transferred to that of a neutral power. Such a rule between Great Britain and us, would be peculiarly dangerous, on account of circumstances, and would facilitate a transfer of seamen from one party to another. Great Britain has accordingly perseveringly declined any definitive arrangement on the subject; notwithstanding earnest and reiterated efforts of our government.

When we consider candidly the peculiar difficulties which various circumstances of similitude, between the people of the two countries, oppose to a satisfactory arrangement, and that to the belligerent party, it is a question of *national safety*, to the neutral party a question of commercial convenience and individual security, we shall be the less disposed to think the want of such a provision as our wishes would dictate, a blemish in the treaty.

The truth seems to be, that from the nature of the thing, it is matter of necessity to leave it to occasional and temporary expedients—to the effects of special interpositions from time to time, to procure the correction of abuses; and if the abuse becomes intolerable, to the *ultima ratio*; the good faith of the parties, and the motives which they have to respect the rights of each other, and to avoid causes of offence, and vigilance in noting and remonstrating against the irregularities which are committed, are probably the only peaceable sureties of which the case is susceptible.

Our minister plenipotentiary, Mr. Pinckney, it is well known, has long had this matter in charge, and has strenuously exerted himself to have it placed upon some acceptable footing; but his endeavours have been unsuccessful, further than to mitigate the evil by some additional checks, and by drawing the attention of the British government to the observance of more

caution. A more sensible effect of our representations has been lately experienced; and with attention and vigilance, that effect may be continued, and perhaps increased. But there is reason to fear that it would constantly be found impracticable to establish an efficacious conventional guard.

I proceed now to the examination of the several articles in the treaty, in the order in which they stand.

The first contains merely a general declaration that there shall be peace and friendship between the contracting parties, the countries and people of each, without exception of persons or places.

One would have imagined that this article, at least, would have escaped a formal objection; however it might have been secretly viewed as the most sinful of all, by those who pant after war and enmity between the two countries. Nothing but the fact could have led to a surmise that it was possible for it to have been deemed exceptionable; and nothing can better display the rage for objection, which actuates the adversaries of the treaty, than their having invented one against so innocent a provision.

But the committee appointed by a meeting at Charleston, (South Carolina) have sagaciously discovered, that this article permits "the unconditional return to our country of all persons who were proscribed during the late war."

With all but men determined to be dissatisfied, it would be a sufficient answer to such an objection to say, that this article is a formula in almost every treaty on record, and that the consequence attributed to it was never before dreamt of, though other nations besides ourselves have had their proscriptions and their banishments.

But this is not all—our treaty of peace with Great Britain in 1783, has an equivalent stipulation in these words (article 6) "there shall be a firm and perpetual peace between his Britannic majesty and the said states, and between the subjects of the one, and the citizens of the other." In calling this an equivalent stipulation, I speak with reference to the objection which is made. The argument to support that objection would be to this effect; "Exiles and criminals are regarded as within the peace of a country; but the people of each are, by this article, placed within the peace of the other; therefore proscribed persons are restored to the peace of the United States, and so lose the character of exiles and criminals." Hence the argument will turn upon the word "peace"—the word "friendship" will have no influence upon the question. In other respects there is no difference, in substance, between the two articles. For the

terms "people," "subjects," "citizens," as used in the two treaties, are synonymous. If, therefore, the last treaty stipulates that there shall be peace between the governments, countries, and people of the two nations, the first stipulates what is equivalent, that there shall be peace between the two governments, and the subjects and citizens of each. The additional words, without exception of persons and places, can make no difference, being merely surplusage. If A says to B, "I will give you all the money in this purse," the gift is as complete as if he had said, "I give you all the money in this purse, without exception of a single dollar."

But the object of the stipulation, and the subject of the objection, have no relation to each other.—National stipulations are to be considered in the sense of the laws of nations. Peace, in the sense of those laws, defines a state which is opposite to war. Peace, in the sense of the municipal laws, defines a state which is opposite to that of criminality. They are, consequently, different things; and a subject of Great Britain, by committing a crime, may put himself out of the peace of our government, in the sense of our municipal laws, while there might be perfect peace with him, in the sense of the laws of nations; and *vice versa*, there might be war with him, in the sense of the laws of nations, and peace in that of the municipal laws.

The punishment of a subject of Great Britain as a felon, would certainly not constitute a state of war between the parties, nor interfere with the peace which is stipulated by this article; though it is declared that it shall *be inviolable*, and might as well be affirmed to prevent the punishment of future, as of former criminals.

But who, in the contemplation of the laws of the respective states, are the proscribed persons? they must have been understood to have been subjects or citizens of the states which proscribed them—consequently cannot be presumed to be comprehended in an article which stipulates peace between the nations and their respective citizens.

This is not a stipulation of peace between a nation and its own citizens; nor can the idea of expatriation be admitted to go so far as to destroy the relation of citizen, as regards amenability for a crime. To this purpose, at least, the offender must remain a citizen.

There can hardly have been a time when a treaty was formed between two nations, when one or the other had not exiled criminals or fugitives from justice, which it would have been unwilling to reinstate. Yet this was never deemed an ob-

stacle to the article, nor has an immunity from punishment ever been claimed under it, nor is there the least ground to assert that it might be claimed under it.

It follows that the objection which has been taken to this article is wholly without foundation. It is humiliating to the human understanding, or disreputable to the human heart, that similar objections should come from sensible men; it is disgusting to have to refute *them*. The regard I feel for some of those who have brought it forward, makes it a painful task. How great is the triumph of passion over the judgment, on this occasion!\*

CAMILLUS.

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No. VII.

**T**HE second article of the treaty stipulates, that his Britannic majesty will withdraw all his troops and garrisons from all *posts* and *places* within the boundary lines assigned by the treaty of peace to the United States; and that this evacuation shall take place on or before the first day of June, 1796; the United States in the mean time, *at their discretion*, extending their settlements to any part within the said boundary line, *except within the precincts or jurisdictions* of any of the said posts—that all settlers and traders within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein; that they shall be at liberty to remain there, or to remove with all or any part of their effects; also to sell their lands, houses, or effects, or to retain the property thereof at their discretion; that such of them as shall continue to reside within the said bound-

\* From a note of the editor of the *Argus*, it is inferred, that a piece has been sent to him, charging the writer of *Camillus* with having liberated some person from jail to insult or fight those who are called respectable whigs—the suggestion is a total falsehood. The writer of *Camillus* has not recently liberated any person from jail—though if he had, it would not be the first instance that laudable actions have been misconstrued and imputed to him as crimes. This is a specimen of the detestable arts which are employed to excite resentment against the supposed author of *Camillus*; what does all this mean?

ary lines, shall not be compelled to become citizens of the United States, but shall be at liberty to do so, if they think proper, making and declaring their election within a year after the evacuation; and that those who should continue after the expiration of a year, without having declared their intention of remaining subjects of his Britannic majesty, shall be considered as having elected to become citizens of the United States.

This article, which accomplishes a primary object of our envoy's mission, and one of primary importance to the United States, has been as much clamoured against as if it had made a formal cession of the posts to Great Britain. On this point an uncommon degree of art has been exerted, and with no small success. The value of the principal thing obtained has been put out of sight by a misrepresentation of incidental circumstances.

But the fact is, nevertheless, that an object has been accomplished, of vast consequence to our country. The most important *desiderata* in our concerns with foreign powers are, the possession of the western posts, and a participation in the navigation of the river Mississippi. More or fewer of commercial privileges are of vastly inferior moment. The force of circumstances will do all we can reasonably wish in this respect; and, in a short time, without any steps that may convulse our trade or endanger our tranquillity, will carry us to our goal.

The recovery of the western posts will have many important consequences. It will extinguish a source of controversy with Great Britain, which, at a period, not distant, must have inevitably involved the two countries in a war, and the thing was becoming every day, more and more urgent. It will enable us effectually to controul the hostilities of the northern and western Indians, and in so doing will have a material influence on the southern tribes. It will therefore tend to rescue the country from what is at present its greatest scourge, Indian wars. When we consider that these wars have, four years past, taken an extra million annually from our revenue, we cannot be insensible of the importance of terminating that source of expense. This million turned to the redemption of our debt, would contribute to complete its extinguishment in about twenty years.\* The benefits of tranquillity to our frontier, exempting its inhabitants from the complicated horrors of savage war-

\* This is a rough calculation, but it cannot materially err.

fare, speak too loudly to our humanity, as well as to our policy; to need a commentary.

The advantages of the recovery of the posts do not stop here; an extension of trade is to be added to the catalogue. This, however, need only be mentioned at this time, as it will come again into view in considering the third article.

But two consequences, not commonly adverted to, require particular notice in this place.

There is just ground of suspicion, corroborated by various concurring circumstances, that Great Britain has entertained the project of contracting our boundaries to the Ohio. This has appeared in Canada—at the British garrisons—at the Indian towns—at Philadelphia, and at London. The surrender of the posts for ever cuts up by the roots, this pernicious project. The whole of our western interests are immediately and deeply concerned in the question.

The harmonious and permanent connection of our western with our Atlantic country, materially depends on our possession of the western posts. Already had great discontent been engendered in that country by their detention. That discontent was increasing and rankling daily. It was actually one of the elements of the insurrection in the western parts of Pennsylvania. While the posts remained in the hands of Great Britain, dangerous tamperings with the inhabitants of that country were to be apprehended—a community of views between Great Britain and Spain might have taken place, and by force and sedition, events formidable to our general union might have been hazarded. The disposition or prevention of that community of views, is a point of the greatest moment in our system of national policy. It presses us to terminate differences, and extinguish misunderstandings with Great Britain;—it urges us to improve the favorable moment, and stamps with the charge of madness, the efforts to let go the hold which the treaty, if mutually ratified, would give us.

Whoever will cast his eye upon the map of the United States, will survey the position of the western posts, their relations to our western waters, and their general bearings upon our western country; and is at the same time capable of making the reflections, which an accurate view of the subject suggests, will discover multiplied confirmations of the position, that the possession of those posts by us, has an intimate connection with the preservation of union between our western and Atlantic territories; and whoever can appreciate the immense mischiefs of a disunion, will feel the prodigious value of the acquisition. To such a man, the question may be confidently

put: Is there any thing in the treaty conceded by us to Great Britain, to be placed in competition with this single acquisition? The answer could not fail to be in the negative.

But it is said by way of objection, that admitting the posts will be surrendered at the time stipulated, it is no acquisition by this treaty: it is only the enjoyment of a right which was secured by the treaty of peace.

With as much good sense might it be said, that the stipulation of reparation for the spoliation of our property, or even immediate actual reparation, if it had been obtained, was nothing gained; because the laws of nations gave us a right to such reparation; and it might in this way be proved to have been impossible for our envoy to have effected any thing useful or meritorious.

Let us see what is the real state of the case. Great Britain had engaged by the treaty of peace, to surrender the western posts *with all convenient speed*; but without fixing a precise time. For the cause, or on the pretext of our not having complied with the treaty on our part, especially in not removing the impediments which the antecedent laws of particular states, opposed to the recovery of British debts, she delayed, and afterwards refused to make the surrender; and when our envoy left this country, there was too much appearance of an intention on her part, to detain them indefinitely, and this after having actually kept them ten years. The treaty of peace was consequently in this particular suspended, if not superseded. It was either to be reinstated by a new agreement, or enforced by arms. The first our envoy has effected; he has brought Great Britain to abandon the dispute, and to fix a precise, determinate time when, at furthest, the posts are to be delivered up. It is therefore to this new agreement, that we shall owe the enjoyment of them, and it is of course, entitled to the merit of having obtained them; it is a positive ingredient in its value, which cannot be taken from it; and it may be added, that this is the first time that the merit of procuring, by negotiation, *restitution of a right withheld*, was ever denied to the instrument which procured it.

But the picture given of the situation of Great Britain, to warrant the inferences which are drawn, is exaggerated and false. It cannot be denied that she is triumphant on the ocean; that the acquisitions which she has made upon France, are hitherto greater than those which France has made upon her. If, on the one hand, she owes an immense debt, on the other she possesses an immense credit, which there is no symptom of being impaired.—British credit has become, in a British mind,

an article of faith, and is no longer an object of reason. How long it may last, how far it may go, is incalculable. But it is evident, that it still affords prodigious resources, and that it is likely for some time to come, to continue to afford them. In addition to this, it is a well ascertained fact, that her government possesses, internally, as much vigor, and has as much national support, as it perhaps ever had at any former period of her history. Alarmed by the unfortunate excesses in France, most men of property cling to the government, and carry with them the great bulk of the nation, almost the whole of the farming interest, and much the greatest proportion of other industrious classes. Her manufactures, though probably wounded by the war, are still in a comparatively flourishing condition. They suffice not only for her own supply, but for the full extent of foreign demand, and the markets for them have not been materially contracted by the war.—Her foreign commerce continues to be immense; as a specimen of it, it may be mentioned, that the ships from India this year, announced to have been seen upon or near the British coast, amounted to 35 in number, computed to be worth between four and five millions sterling. It is no light circumstance in the estimate of her resources, that a vast preponderancy in that quarter of the globe continues to nourish her wealth and power.

If from a view of Great Britain, singly, we pass to a view of her in her foreign connections, we shall find no cause to consider her as a prostrate nation. Among her allies, are the two greatest powers of Europe (France excepted) namely, Russia and Austria, or the emperor: Spain and Sardinia continue to make a common cause with her. There is no power of Europe which has displayed a more uniform character of perseverance than Austria; for which she has very strong motives on the present occasion. Russia, too, is remarkable for her steadiness to her purpose, whatever it may be. It is true, that heretofore she has not discovered much zeal in the coalition, but there are symptoms of her becoming more closely and cordially engaged. If she does, she is a great weight in the scale.

Against this will be set the astonishing victories, heroic exploits, and vast armies of France, her rapid conquests to the Rhine, the total reduction of Holland, the progress of her arms in Spain and Italy, the detaching of the king of Prussia from the coalition, and the prospect of detaching some others of the German princes; and it will be added, that the continental enemies of France appear exhausted, despairing and unable to continue the war.



This, if offered only to show that there is no probability that the enemies of France can succeed in the original object of the war against her, or can divest her of her acquisitions on the continent, has all the force that may be desired to be given to it ; but when it is used to prove that the situation of Great Britain is so desperate and humbled as to oblige her to receive from France, or the United States, any conditions which either of them may think fit to impose, the argument is carried infinitely too far. It is one thing for a country to be in a posture not to receive the law from others, and a very different thing for her to be in a situation which obliges others to receive the law from her, and what is still stronger, from all her friends. France evidently cannot annoy Russia—she cannot, without great difficulty, from their geographical position, make any further acquisitions upon the territories of Austria. Britain and her possessions are essentially safe, while she maintains a decided maritime superiority. As long as this is the case, even supposing her abandoned by all her allies, she never can be in the situation which is pretended by the opposers of the treaty.

But in describing the situation of France, only one side of the medal is presented. There is another side far less flattering, and which, in order to come to a just conclusion, must be impartially viewed.

If the allies of Great Britain are fatigued and exhausted, France cannot be in a better condition. The efforts of the latter, in proportion to intrinsic resources, have, no doubt, been much greater than those of the former. It is a consequence from this, physically certain, that France must be still more fatigued and exhausted, even than her adversaries. Her acquisitions cannot materially vary this conclusion : the low countries, long the theatre of the war, must have been pretty well emptied before they fell into her hands. Holland is an artificial power ; her life and strength were in her credit ; this perished with her reduction. Accordingly the succours extracted from her, compared with the scale of the war, have been insignificant.

But it is conjectured, that as much has not been done as might have been done ; that restitution of the posts has not been procured, but only a promise to restore them at a remote period, in exchange for a former promise, which had been violated. That there is no good ground of reliance upon the fulfilment of this new promise, for the performance of which there ought to have been some surety or guarantee. That the restitution of the posts ought to have been accompanied with indemnification for the detention, and for the expenses of the Indian wars which have been occasioned by that deten-

tion, and by the instigation of British intrigue. That it was better to go to war than to relinquish our claim to such indemnification; or if our present circumstances did not recommend this, it was better to wait till it was more convenient to us to enforce our claims, than to give them up.—These are the declamations by which this part of the treaty is arraigned. Let us see if they are the random effusions of enthusiasm, or the rational dictates of sound policy.

As to the suggestion, that more might have been done than was done, it must of necessity be mere conjecture and imagination. If the picture given of the situation of Great Britain, was better justified by facts than it is, it would not follow that the suggestion is true; for the thing would depend not on the real situation of the country, but on the opinion entertained of it by its own administration, on the personal character of the prince and of his council; on the degree in which they were influenced by pride and passion, or by reason. The hypothesis, that the dispositions of a government are conformable with its situation, is as fallacious a one as can be entertained. It is to suppose, contrary to every day's experience, that cabinets are always wise. It is, on the part of those who draw the inference, to suppose, that a cabinet, the most violent, rash, and foolish, of Europe, is at the same time moderate and prudent enough to act according to the true situation of the country. Who of our enthusiasts, reasoning from his view of the abased condition of Great-Britain, has not long since imagined that she ought to be on her knees to France, suing for mercy and forgiveness? Yet how different hitherto is the fact! If we carefully peruse the speeches of the leading members of the convention, we shall observe the menaces against Britain frequently interspersed with invitations to peace; while the British government maintains a proud and distant reserve, repels every idea of peace, and inflexibly pursues the path of war. If the situation of Europe in general, and of Great Britain in particular, as is pretended, authorized us to expect whatever we chose, how happens it that France, with all her victories, has not yet been able to extort peace?

As to the true position of France, we are not left to mere inference. All the official reports, all the private accounts from thence acknowledge a state of extreme embarrassment and distress; an alarming derangement of the finances, and a scarcity not distant from famine. To this are to be added, a continuance of violent and destructive conflicts of parties, and the unextinguishable embers of insurrection.

This fair comparison of the relative situation of the contending parties, will, I know, be stigmatized as blazoning the strength and resources of Great Britain, and depreciating the advantages of France. But the cant phrases of party cannot alter the nature of truth—nor will they prevent the people of the United States from listening impartially to it, or from discerning that it is a mark of fidelity to their interests, to counteract misrepresentation, by placing facts fairly before them, and a duty which they owe to themselves, and which they cannot omit to perform without betraying their own interests, to receive them candidly, and weigh them maturely.

The conclusion is, that all those highly-charged declamations which describe Great Britain to us as vanquished and humbled; as ready to pass under the yoke at command, and to submit to any conditions which we may think fit to prescribe, are either the chimeras of over-heated imaginations, or the fabrication of impostors; and if listened to, can have no other effect than to inspire a delusive presumption, and a dangerous temerity.

But to judge the better of the extravagance of these declamations, it will be useful to go back to the periods when the negotiation began and ended. Our envoy arrived in England and entered upon the business of his mission, at the moment when there was a general elation on account of the naval victory gained by Lord Howe, and previous to those important successes, which have terminated in the conquest of Holland; and the treaty was concluded by the 19th of November last, prior to the last mentioned event, and the defection of the king of Prussia. The posture of things at the time it was in negotiation, and not at this time, is the standard by which to try its merits; and it may be observed, that it is probable the negotiation received its first impression, and even its general outline anterior to the principal part of the disasters sustained by the coalesced powers in the course of the last campaign.

It may not be improper to add, that if we credit the representations of our envoy, Great Britain manifested similar dispositions with regard to the treaty at the commencement as at the close of the negotiation: whence it will follow, that too much has been attributed in this country to the victories of France.

The subject of the second article will be resumed and concluded in the next number.

CAMILLUS.

## No. VIII.

ONE of the particulars, in which our envoy is alleged to have fallen short of what might or ought to have been done, respects the time for the surrender of the western posts. It is alleged, that there ought either to have been an immediate surrender, or some guarantee or surety for the performance of the new promise. Both parts of the alternative presuppose that Great Britain was to have no will upon the subject; that no circumstances of security or convenience to her were to be consulted; that our envoy was not to negotiate, but to command. How unsubstantial the foundation on which this course of proceeding is recommended, has been already developed.

The fact was, that our envoy pressed an early evacuation of the posts; but there was an inflexible adherence, on the other side, to the term limited in the treaty. The reasons understood to have been assigned for it, were to this effect, viz. That according to the course of the Indian trade, it was customary to spread through the nations, goods to a large amount, the returns for which could not be drawn into Canada, in a shorter period than was proposed to be fixed for the evacuation; that the impression which the surrender of all the posts to American garrisons might make on the minds of the Indians, could not be foreseen; that there was the greatest reason for caution, as, on a former occasion, it had been intimated to them by public agents of the United States, that they had been *forsoaken* and *given up* by the British government; that the protection promised on our part, however sincere, and however competent in other respects, might not be sufficient in the first instance to prevent the embarrassment which might ensue; that for these reasons the traders ought to have time to conclude their adventures, which were predicated upon the existing state of things; that they would in future calculate upon the new state of things; but that, in the mean time, the care of government ought not to be withdrawn from them.

There is ground to believe, that there were representations on behalf of the Canada traders, alleging a longer term than that which was adopted in the treaty, to be necessary to wind up and adapt their arrangements to the new state of things; and that the term suggested by them was abridged several months. And it may not be useless to observe, as explanatory to the reasons given, that in fact it is the course of the trade to give long credits to the Indians, and that the returns for goods furnished in one year, only come in the next year.

What was to be done in this case? Was the negociation to break off, or was the delay to be admitted? The last was preferred by our envoy; and the preference was rightly judged.

The consequence of breaking off the negociation has been stated. No reasonable man will doubt, that delay was preferable to war, if there be good ground of reliance, that the stipulation will be fulfilled at the appointed time. Let us calmly examine this point.

The argument against it, is drawn from the breach of the former promise. To be authorized to press this argument, we ought to be sure that all was right on our part.—After what has been offered on this subject, are we still convinced that this was the case? Are we able to say, that there was nothing in our conduct which furnished a ground for that of Great Britain? Has it not been shown to be a fact, that, from the arrival of the provisional articles in this country, till after the ratification thereof, by the definitive treaty, acts of states interdicting the recovery of British debts, and other acts militating against the treaty, continued in operation? Can we doubt, that subjects of Great Britain, affected by these acts, carried complaints to the ears of their government? Can we wonder, if they made serious impressions there, if they produced dissatisfaction and distrust? Is it very extraordinary, if they excited the idea of detaining the posts as a pledge, till there were better indications on our part? Is it surprising, if the continuance of these acts, and the addition of others, which were new and positive breaches of the treaty, prolonged the detention of the posts?—

In fine, was the delay in surrendering so entirely destitute of cause, so unequivocal a proof of a perfidious character, as to justify the conclusion, that no future dependence can be made on the promises of the British government? Discerning men will not hastily subscribe to this conclusion.

Mutual charges of breach of faith are not uncommon between nations: yet this does not prevent their making new stipulations with each other, and relying upon their performance. The argument from the breach of one promise, if real, to the breach of every other, is not supported by experience; and if adopted as a general rule, would multiply, infinitely, the impediments to accord and agreement among nations.

The truth is, that though nations will too often evade their promises on colourable pretexts, yet few are so profligate as to do it without such pretexts. In clear cases, self-interest dictates a regard to the obligations of good faith: nor is there any thing in the history of Great Britain which warrants the opinion,

that she is more unmindful than other nations, of her character for good faith.

Yet she must be so, and in an extreme degree, if she be capable of breaking, without real cause, a *second* promise on the *same* point, after the termination, by a new treaty, of an old dispute concerning it, and this too on the basis of mutual reparation. It would indicate a destitution of principle, a contempt of character, much beyond the usual measure, and to an extent which it may be affirmed is entirely improbable.

It is a circumstance of some moment in the question, that the second promise is free from the vagueness of the first, as to the time of execution—It is not to be performed *with all convenient speed*, but by a day certain, which cannot be exceeded. This would give point to violation, and render it unequivocal.

Another argument, against the probability of performance, has been deduced from the supposed deficiency of good reasons for the delay, which is represented as evidence of want of sincerity in the promise.

Besides the reasons which were assigned for that delay, there are others that may be conjectured to have operated, which it would not have been equally convenient to avow; but which serve to explain the delay different from the supposition of its having been calculated for ultimate evasion. If, as we have with too much cause suspected, Great Britain, or her representatives in Canada, whether with or without orders, had really countenanced the hostilities of the western Indians, it was to be expected, that she should think it incumbent upon her, to give them sufficient time to make peace, before an evacuation of the posts should put them entirely in our power. She might, otherwise, have provoked them to hostilities against her own settlements, and have kindled in their minds, inextinguishable resentments. It was not certain, how soon a peace should be brought about; and it might be supposed, that the disposition to it on our part, might be weakened or strengthened, by the proximity or remoteness of the period of the surrender. Moreover, some considerable time might be requisite, to prepare those establishments for the security of Canada, which the relinquishment of the posts on our side, would be deemed to render necessary.

The latter motive is one, not justly objectionable: the former implies an embarrassment, resulting from a culpable policy, which was entitled to no indulgence from us, but which, nevertheless, must have had a pretty imperious influence on the conduct of the other party, and must have created an obstacle

to a speedy surrender; not easy to be surmounted. Taken together, we find in the reasons assigned; and in those which may be presumed to have operated, a solution of the pertinacity of Great Britain on the subject of time, without impeaching, on that account, the sincerity of the promise to surrender.

But we have very strong holds, for the performance of this promise, upon the interest of Great Britain: 1st. The interest which every nation has, in not entirely forfeiting its reputation for honor and fidelity: 2d. The interest which results from the correlative stipulation with regard to the indemnification for the British debts, a point upon which there will be no inconsiderable mercantile sensibility. 3d. The interest of preserving peace with this country, the interruption of which, after all that has passed, could not fail to attend the non-surrender of the posts at the stipulated time.

It is morally certain, that circumstances will every day add strength to this last motive.—Time has already done much for us, and will do more. Every hour's continuance of the war in Europe, must necessarily add to the inconveniencies of a rupture with this country, and to the motives which Great Britain must feel, to avoid an increase of the number of her enemies, to desire peace, and, if obtained, to preserve it.

The enemies of the treaty, upon their own calculations, can hardly dispute, that if the war continues another year after the present, the probable situation of Great Britain, will be a complete security, for her compliance with her promise, to surrender the posts. But let us suppose, that a general peace takes place in Europe this winter, what may then be the disposition of Great Britain in June next, as to war or peace with this country?

I answer, that the situation will be, of all others, that which is most likely to indispose her to a war with us. There is no juncture, at which war is more unwelcome to a nation, than immediately after the experience of another war, which has required great exertions, and has been expensive, bloody, and calamitous. The minds of all men then dread the renewal of so great an evil, and are disposed rather to make sacrifices to peace than to plunge afresh into hostilities. The situation of Great Britain, at the end of the war, in which she is now engaged, is likely to be the most discouraging that can be imagined to the provocation of new wars. Here we may discover a powerful security for the performance of her stipulations.

As to the idea of a guarantee or surety for the fulfilment of the promise, it cannot be seriously believed that it was obtainable. It would have been an admission of the party, that there

was a well founded distrust of its faith. To consent to it, therefore, would have been to subscribe to its own humiliation and disgrace, the expectation of which has been shown to be ridiculous.

But why was there not equally good reason that we should have given a guarantee or surety for the performance of our new promise, with regard to the debts? And if there was to have been reciprocity, where should we have conveniently found that guarantee or surety? Should we have thought it very reputable to ourselves, to have been obliged to furnish it?

The arguments of the opposers of the treaty, are extremely at variance with each other. On the one hand, they represent it as fraught with advantages to Great Britain, without equivalents to the United States—as a premeditated scheme to sacrifice our trade and navigation to hers—as a plan dictated by her, for drawing the two countries into close connection and alliance, and for making our interests subservient to hers; on the other hand, they tell us, that there is no security for the surrender of the posts, according to stipulation. How is the one thing to be reconciled with the other? If the treaty is such an immense boon to Great Britain, if it be such a master-piece of political craft on her side, can there be any danger that she will destroy her favorite work, by not performing the conditions on which its efficacy and duration must depend? There is no position better settled, than that the breach of any article of a treaty by one party, gives the other an option to consider the whole treaty as annulled. Would Great Britain give us this option, in a case in which she had so much to lose by doing it?

This glaring collision of arguments, proves how superficially the adversaries of the treaty have considered the subject, and how little reliance can be placed on the views they give of it.

In estimating the plan which the treaty adopts, for the settlement of the old controversy, it is an important reflection, that, from the course of things, there will be nothing to be performed by us before the period for the restitution of the posts will have elapsed; and that, if this restitution should be evaded, we shall be free to put an end to the whole treaty, about which there could not be a moment's hesitation. We should then be where we were before the treaty, with the advantage of having strengthened the justice of our cause, by removing every occasion of reproach, which the infractions of the treaty of peace may have furnished against us.

Two other particulars, in which this part of the treaty is supposed to be defective, regard the want of indemnification



for the detention of the posts, and for the expenses of Indian wars.

Those who make the objection, may be safely challenged to produce precedents of similar indemnifications, unless imposed by *conquering* powers on the vanquished, or by powers of overbearing strength upon those which were too weak to dispute the logic of superior force. If this were the real situation of the United States and Great Britain, then is the treaty inexcusably faulty; but if the parties were to treat and agree as equal powers, then is the pretension extravagant and impracticable. The restitution of the specific thing detained, is all that was to be expected, and, it may be added, it is all that was ever really expected on the part of this country, so far as we may reason either from official acts or informal expressions of the public opinion.

In cases where clear injuries are done, affecting objects of known or easily ascertained values, pecuniary compensation may be expected to be obtained by negotiation; but it is believed that it will be impossible to cite an example of compensation so obtained, in a case in which territory has been withheld on a dispute of title, or as a hostage for some other claim (as, in the present instance, for securing the performance of the 4th article of the treaty of peace.) The recovery of the territory withheld is the usual satisfaction.

The want of a rule to adjust consequential damages, is, in such cases, a very great difficulty. In the instance under discussion, this difficulty would be peculiarly great.—The posts are, for the most part, in a wilderness. There are but two of them which have any adjacent settlements; Point-au-fer, or Dutchman's point, to which a part of a tract of land, called Caldwell's Manor, with a few inhabitants, has been claimed as appurtenant; and Detroit, which has a settlement in the town and neighbourhood of between two and three thousand souls. In the vicinity of the other posts, on our side, there is scarcely an inhabitant. It follows, that very little damage could be predicated either upon the loss of revenue from, or of the profits of trade with, the settlements in the vicinity of the posts. The trade of the Indians within our limits would consequently be the basis of the claim of compensation.—But here the ignorance or spirit of exaggeration of the opponents of the treaty has been particularly exemplified. The annual loss from this source has been stated by a very zealous writer against the treaty, who signs himself *Cato*, at 800,000 dollars.

Now it is a fact well ascertained, that the mean value of the whole exports from Canada in peltries (which constitute the

returns of Indian trade) in the years 1786 and 1787, was something short of 800,000 dollars. It is also a fact, in which all men, informed on the subject, agree, that the trade with the Indians, within our limits, \* is not more than about one eighth of that which furnishes the peltry exported from Canada. Hence the total product of our Indian trade could not be computed at more than 100,000 dollars. What proportion of this may be profit, is not easy to be determined; but it is certain, that the profits of that trade, from the decrease of wild animals, and the inferiority of their kinds, are not considerable.—Many assert, that it is scarcely any longer worth following. Twenty per cent. therefore, would, probably, be a large allowance, which would bring the loss on our Indian trade, by the detention of the posts, to about 20,000, instead of 800,000 dollars per annum, as has been asserted.

But might not a claim, even of this sum, by way of indemnification, be encountered with some force, by the observation, that there is the highest probability that the capital and labour which would have been employed to produce 20,000 dollars profit on the trade with the Indians, have been quite as productively employed in other channels, and consequently, that there may have been no loss at all?

Thus we see how erroneous are the data which serve to magnify claims, in themselves insignificant, and which, from the

\* An account of peltries exported from Canada in 1786 and 1787.

	1786.	1787.
Beaver skins	116,569	139,509
Martin do.	58,132	68,132
Otter do.	26,330	26,330
Mink do.	9,951	17,951
Fisher do.	5,813	5,813
Fox do.	6,213	8,913
Bear do.	22,108	17,108
Deer do.	126,000	102,656
Racoon do.	108,346	140,346
Cat do. cased	3,026	4,526
Do. do. open	2,925	1,825
Elk do.	7,515	9,815
Wolf do.	12,287	9,687
Carcajoux do.	503	653
Tiger do.	77	27
Seal do.	157	125
Muskrat do.	202,456	240,456
Deer do. dressed	5,488 lbs.	1,788 lbs.
Castors	1,454 lbs.	1,434 lbs.

great uncertainty of their quantum, are exposed to serious objections. Are claims like these, proper subjects on which to stake the peace of the United States?

The reasonableness of indemnification for the expenses of Indian wars, independent of the unusual nature of the claim, might have been matter of endless debate. We might have been told, that the Indians ascribe those wars to pretensions upon their lands, by virtue of treaties with the former government of the United States, imposed by violence, or contracted with partial and inadequate representations of their nation—that our own public records witness, that the proceedings of our agents, at some of those treaties, were far from unexceptionable—that the wars complained of are to be attributed to errors in our former policy, or mismanagement of our public agents, not to the detention of the posts—that it must be problematical how much of the duration or expenses of those wars are chargeable upon that detention—and, that the posts having been detained by way of security for the performance of the article respecting debts, there was no responsibility for collateral and casual damages. Had we resorted to the charge of their having instigated or prompted those wars, they would have denied the charge, as they have repeatedly done before; and, though we might have been able to adduce circumstances of suspicion against them, they would have contested their validity and force, and, whether guilty or not, would have thought their honor concerned in avoiding the most distant concession of having participated in so improper a business.

In every view, therefore, the claim for indemnification was a hopeless one; and to insist upon it would have answered no other purpose than to render an amicable adjustment impossible. No British minister would have dared to go to a British parliament to ask provision for such an expenditure. What, then, was to be done? Were we now or hereafter to go to war to enforce the claim? suppose this done, and fifty or a hundred millions of dollars expended in the contest, what certainty is there that we should at last accomplish the object?

Moreover, the principle of such a war would require, that we should seek indemnification for the expenses of the war itself, in addition to our former claim. What prospect is there, that this also would be effected? yet if not effected, it is evident that we should have made a most wretched bargain.

Why did we not insist on indemnification for the expenses of our revolution war? Surely, not because it was less reasonable, but because it was evident that it could not have been obtained, and because peace was necessary to us as well as to our enemy.

This likewise would be the end of a war undertaken to enforce the claim of indemnification for the detention of the posts. We should at length be glad to make peace, either without the indemnification sought, or at best at an expense to carry on the war, without a chance of reimbursement, with which the thing gained would bear no comparison.

The idea which has been thrown out, of leaving the posts in the hands of the British, till we might be better able than at present to go to war for indemnification, is a notable political expedient. This would be to postpone, of choice, the possession of an object which has been shown to be demanded by very urgent and important general considerations; to submit to certain and great inconveniencies from that privation, including probably the continuance or renewal of Indian hostilities; and to run the risk, from the growth of the British settlements in the neighbourhood of the posts, and various unforeseen casualties, of their ultimate acquisition becoming difficult and precarious: For what? why, to take at last the chances of war, the issue of which is ever doubtful, to obtain an object, which, if obtained, will certainly cost more than it is worth. The expenses of war apart, pecuniary indemnification upon any possible scale, would ill compensate for the evils of the future detention, till the more convenient time for going to war should arrive. What should we think of this policy, if it should turn out that the posts and the indemnification too were to be finally abandoned?

CAMILLUS.

[TO BE CONTINUED.]



## Impressment of American Seamen.

### P R O T E S T.

STATE OF CONNECTICUT, *ff.*

*County, City, and Port of New London.*

**B**E it known and remembered, That at the city of New London, on the 29th day of July, A. D. 1795, before me, the subscriber, a notary public, duly authorised, and living in said city, personally came Cyprian Cook, master of the sloop

Crisis, of Norwich, in said state of Connecticut, also. Elijah Clarke, passenger on board the sloop Crisis, and being duly sworn, deposed and said :—

That on the 4th day of July, instant, they were lying at anchor, together with upwards of twenty other American vessels, in the port of Jeremie, in Hispaniola, when the English frigate, called the Hermione, stationed at Port-au-Prince, came down to Jeremie, and there came to anchor, and sent his boats on board the said American vessels, and impressed every man from on board said American vessels (except the captains and mates) to the number of sixty or seventy, and by force carried them on board the Hermione, where they were kept for the space of forty-eight hours, without receiving any sustenance, in order to compel the said American seamen to enter on board the Hermione ; during which forty-eight hours, the several American captains went to the British commandant, and made complaint to him of the conduct and proceedings of the commander of the said frigate Hermione, when the commandant answered, “ that he could do nothing about the same, as the commandant of the Hermione did as he pleased.”

After which the said American captains repaired on board the Hermione, and made applications, to the commander, for the restoration of their men ; when the said commander of the Hermione, called the said American crews up, one by one, and examined them individually respecting their ages and bodily strength, and out of the sixty or seventy taken as aforesaid, only five were restored ; and those, as the commander of the Hermione said, because they were infirm and unfit to serve king or country.—These five he returned to the said American captains, treating said captains in the most imperious and insulting manner.—And the deponents further say the sixty or seventy seamen taken as aforesaid, were all American born, except two who were Danes by birth, but had been naturalized in America : and that they returned with the said sloop Crisis, destitute of men, to the port of New London, where they arrived on the 26th July, instant, and farther say not.

CYPRIAN COOK, master.

ELIJAH CLARKE, passenger.

(L. S.)

In testimony whereof, &c.

LYMAN LAW, notary public.

## Breach of the Laws of Neutrality.

**B**E it known unto all it may concern, that on the day of the date hereof, before me, Christopher Ellery, public notary for the county of Newport, in the state of Rhode Island and Providence Plantations, in the United States of America, came Thomas Blifs, master of the sloop Peggy, of Newport, just arrived from New York, and Louis Andre Pichon, formerly secretary of the legation of the French to the United States, passenger on board said sloop, together with S. A. Hoffer, citizen of Boston, and captain Chabert, also a passenger on board said sloop, all of whom, on their oaths, declare, that yesterday at 3 o'clock in the afternoon, being the first day of August, instant, they were at a distance of two miles from the light-house, in Narraganset bay, in said sloop, bound to Newport; when being opposite the same, a British ship of war, the Africa, commanded by Home, fired a cannon shot at said sloop, as a signal to bring her to; that the sloop had then American colours flying; that the master obeying the signal, soon perceived two boats coming to the sloop, from the ship of war, which boats were manned by a part of the crew of this ship, and out of which came four or five officers. Two of them appearing to be higher in command than the others, ordered the captain of the said sloop to go near to the ship, with which order he complied, and soon anchored astern of the said ship; that, in the mean time, the officers asked the said master of the sloop several questions, particularly if he had any passengers on board, and he answering to this question in the affirmative, was told by them, that they came on purpose to take the late French minister, M. Fauchet, whom they knew to be on board with dispatches; that the master and passengers then informed them, that M. Fauchet had left the sloop in the morning, at Stonington, where they had been detained two days, by contrary winds; and that he had also left Stonington aforesaid, on horseback, with dispatches and public papers, which were all taken out of pasteboard boxes; as a proof of the last assertion, showed the said boxes empty, five in number, which M. Fauchet had really left. The officers, not satisfied with the answers given, said, their orders were positive, and directed them to search all the trunks of the passengers, at which proceeding they hoped no one on board would be hurt, as their duty required the same; that they accordingly had all the trunks and boxes in the cabin opened, and not finding any papers, they went into the hold, where having ordered M.

Fauchet's servant to open the trunks of his master, they had them emptied, in presence of all the passengers, and out of one of the trunks, they took a bundle of paper, which they gave to one of the officers in care, when the search went on for the other trunks; that they then asked for two other trunks of M. Fauchet, saying, that they had notice of four trunks shipped on board the said sloop, and seeing several other trunks stowed about, they, the said officers, demanded the owners; that one of these, belonging to captain Chabert, afore named, a gentleman engaged in commercial and seafaring business, was overhauled, and the papers, consisting chiefly of sea-books, or journals, examined and put aside with a tin box, containing some papers, with letters directed to different persons in France: that they then fell upon the trunk of M. Pichon, which as they found heavy, they desired to have it opened, threatening, as no one stepped forward with the key, to break the lock thereof; that M. Pichon then went forward, and opened the trunk, which proved to be full of written papers, under clothes; these thrown out, they observed that it was the trunk of M. Fauchet's secretary, and that its containing such a quantity of papers, was a sufficient reason for taking it on board the ship, for the inspection of the captain of the ship; that an officer then went on board the ship with such papers as he thought proper to take with him, that he might receive the orders of the commanding officer relative thereto, and relative to further proceedings; that this officer soon returned, and permitted the sloop to depart, saying that the main object being missed, no further detention was necessary, and returning the papers which he had taken on board the ship; and that the two boats having left the sloop, after a detention of two hours, she came to sail and arrived at Newport in the evening.

THOMAS W. BLISS,  
LOUIS ANDRE PICHON,  
S. A. HOFFER, and  
CHABERT.

In testimony that the aforesaid declaration was made before me, the afore named public notary, as is above set forth, and on the 2d day of August, in the year 1795, and the 20th year of American independence, I have hereunto set my hand and notarial seal, the day and year aforesaid.

(L. S.) CHRIST. ELLERY, *Public Notary.*

Certifié conforme l'expédition qui sera enregistré en la chancellerie au consulat de la Republique Francaise à Boston, ce 19

Thermidor, de l'an 3 de la Republique Francaise, une et indivisible.

Le consul de la Republique Francaise à Boston.

MOZARD.



## R E S O L U T I O N S

*Unanimously agreed to, at a Meeting of the Citizens of Petersburg, on Saturday the 1st of August, 1795.*

**R**ESOLVED, as the opinion of this meeting, That a strict adherence to the principles of the constitution, ought at all times to be regarded, as the first duty of public officers, in every department; and that it is the *Right* of the *People*, not only to guard against the exercise of a power which has not been delegated, but to see that a power confided to the three branches of congress collectively, shall not be assumed by one only, or by two of them.

The members of this meeting conceive, that the constitution of the United States, has empowered congress, and not the president and senate,

“ To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

“ To establish an uniform rule of naturalization:

“ To define and punish piracies:

“ To declare war, &c. and make rules concerning captures on land and water;—and

“ To lay and collect taxes, duties, excises, and imposts.”

And, therefore, that so much of the 3d, 12th, 13th, 14th, and 15th articles of the treaty, now under consideration, as respects the regulation of trade;

So much of the 2d article as gives to a British subject the rights of a natural-born citizen of the United States; without the previous residence, and other requisites, enumerated in the late act of Congress;

So much of the 21st article as defines and punishes an act therein pronounced to be piracy;

So much of the 17th article as makes a rule in cases where vessels shall be captured or detained, on suspicion of having enemy's property on board;—and,

So much of the 3d and 15th articles as contains a surrender, by two branches of the government of the United States, of a



right entrusted to the whole congress, of laying duties and imposts, on British and other vessels, at discretion;

Are contrary to the constitution, and that the ratification of these clauses would be absolutely void.

The members composing this meeting, view, with no less astonishment than concern, the contempt manifested by the senate, for the constitution of the United States, in advising the president to ratify, provisionally, a treaty, which violates the essential principles of our government, and excludes the house of representatives, from an exercise of powers expressly given to them, as well as to the president and senate. They are of opinion, that the conduct of the senate demands the serious attention of every real friend to the union; and that an attempt so daring and so dangerous, calls for the most pointed and unequivocal censure from the people.

Resolved, as the opinion of this meeting, That the idea on which this treaty is founded, of "terminating the differences between the United States and Great Britain, without reference to the merits of their complaints and pretensions," is as fallacious as it is new; that it is contrary to the principles sanctioned by the executive in the correspondence between the late secretary of state and Mr. Hammond; and ought to be reprobated by a nation which regards either its honor or its interest.

It is also the opinion of this meeting, That the silence of this treaty, with respect to the slaves and other property carried off by the British troops, contrary to the 7th article of the definitive treaty, is in the highest degree reprehensible; because a claim for compensation, on this account, being a matter of difference, ought, even under the idea above mentioned, to have been brought forward; because such a claim is founded on an express obligation created by the treaty of 1783, as well as in justice and good faith; and because in the correspondence above mentioned, between the late secretary and Mr. Hammond, this claim is ranked, not among those things which are of "smaller concern," and may therefore "be passed over," but "insisted on," as one, "rendered indispensable by justice to individuals or by public policy."

Resolved, also, as the opinion of this meeting, That the 2d article of the treaty, under consideration, is materially defective, because it does not contain a stipulation on the part of Great Britain, to pay to the United States, a reasonable compensation for the various losses sustained, and expenses incurred by the detention of the western posts; that it is vague, in not defining the precincts and jurisdiction of the said posts; and so ab-

furd in requiring the co-operation of the United States, and the governor general, in making previous arrangements concerning the delivery of them, that a belief must be indulged, that a bona fide execution of this part of the treaty, was neither intended by the British minister, nor expected by our own.

Resolved, also, as the opinion of this meeting, That an *independent people* ought not to conclude a treaty of any kind, with any nation, but on terms of perfect equality. They regard this as a sacred principle, from which every consideration of honor and interest, forbids this country to depart. Under this impression, they view with abhorrence a treaty, the stipulations of which, even after the 12th article shall be removed, so unequivocally admit the pretensions of Great Britain, to a monopoly of commercial advantages, to be well founded.

Resolved, also, as the opinion of this meeting, That the 6th article is unjust, in principle, and will be pernicious in effect: Unjust, because, a government is not responsible for the acts of its citizens, unless it ratifies or approves them; and the debts now to be paid by the United States, were due from private individuals, previous to the adoption of the federal system; and because the present government, instead of throwing impediments in the way of the recovery of British debts, has organized courts, whose only employment has been to enforce their payment: And pernicious, because the circumstances which shall entitle a creditor to redress before the commissioners, are not enumerated, as they might easily have been, and thus great latitude is left for the exercise of discretionary powers—because it cannot be presumed that the real debtors will appear before commissioners at a distance, to controvert claims, in which they are no longer interested; and thus a door will be opened to frauds, the extent of which exceeds calculation: And because it tends to a wanton accumulation of the public debt, already swelled to a size beyond the fears of the friends, or the hopes of the enemies, of the union.

Resolved, also, as the opinion of this meeting, That the 7th article is defective, because it does not contain an express recognition of the illegality of the orders which were issued by the British ministry in 1793, and which occasioned the captures complained of by the United States: and because it obliges the United States to pay for vessels taken within their limits and jurisdiction, though they are not bound to France, or to any other nation, in like manner, by their treaties with them; and although in cases of the like nature which may hereafter occur, the 25th article obliges the United States not to pay,

but only to use their best efforts to obtain satisfaction from the offending party.

Resolved, as the opinion of this meeting, That in the event of a war, or national difference, it may be both just and politic, to sequester and even confiscate debts, due in this country, to the individuals of a nation at war with the United States; and that, *if this power could be relinquished*, sound policy requires, that, in the present situation of affairs, it should be retained.

Resolved, as the opinion of this meeting, That as by the law of nations (according to the modern conventions) and by the treaties between the United States and the French, the Dutch, the Swedes and the Prussians, free ships make free goods;—the 17th article of this treaty, which subjects French property in American bottoms to seizure, deserves the most pointed reprobation; because, it will immediately deprive the American merchants, of the benefit of carrying the goods of nations at war with Great-Britain; because, in case of a war between the United States and France, *which the PEOPLE forbid!* American property, in British neutral vessels, would be secure; and because, in the present state of affairs, it will produce such injury to the French, as will give them *just cause of resentment* against the partial policy of the American government.

Resolved, as the opinion of this meeting, That the stipulation in the 18th article, making ship-timber, tar, hemp, sails and copper, contraband of war, which are free by our treaties with other nations, is unnecessarily hurtful to the trade of the United States, and manifests the same unfriendly temper to the French.

The members of this meeting are also of opinion, That all good citizens should express their decided disapprobation of the second clause of the 18th article, which authorizes, though not in words, yet in substance, the seizure of American vessels carrying provisions to France.

The members of this meeting solemnly declare their abhorrence of a concession, so incompatible with the object of the late embassy, so derogatory to the honor, so injurious to the interests of America, and so openly and pointedly hostile to the cause of France. They detest a war; they consider it as treason against the happiness of men; but they would cheerfully endure all the calamities which it produces, rather than in any shape be accessory to a combination, which is the scourge of Europe, and the dishonor of the world.

Resolved therefore, as the opinion of this meeting, That this treaty *ought not to be ratified* by the president and senate of the

United States, even if the British king should consent to a suspension of so much of the 12th article as respects the trade to be carried on, between the United States and the British West India islands.

Resolved, That the chairman of this meeting be requested to adopt such method as he judges best, to furnish the president with a copy of the above resolutions.

The following resolutions were also agreed to by the meeting.

Resolved, That the minority of the senate, who opposed the ratification of the treaty with Great Britain, are entitled to the thanks of their country; and that the senators from this state have justified the confidence reposed in them by their constituents.

Resolved, That the patriotic boldness, and magnanimous independence of Stephens Thompson Mason, in having caused the publication of the treaty aforesaid, deserve the most grateful incense that can be offered to a generous mind, the praise of Republicans.

JOSEPH JONES, Chairman.

WILLIAM WHITLOCK, Secretary.



## A D D R E S S

*To the President of the United States.*

SIR,

THE sentiments which are now respectfully addressed to you, are not, merely, the emanations of a solitary individual; they have been already expressed by thousands of your fellow citizens, whose united voices urge you to adhere to those principles of patriotism, which have so honorably directed all your public conduct, by withholding or suspending the last final act which rests with you for giving effect to the depending treaty between the United States and Great-Britain, or by giving such a direction to the further negotiations respecting it, as may produce a material change from its present form. This treaty is now before the public; and, when the scrutinizing eye of America, shall have viewed it in all its aspects, be assured, sir, that the just and solid objections

which apply to it, will be found to be of a nature too imperious to be resisted by the genuine patriot and guardian of his country's peace. It is not the object of the present address, to enumerate those objections at large; a few of the most prominent only are selected for your serious consideration; of these, the first class may be denominated, omissions on the part of our negociator, and are as follow:

He has omitted to make any convention or stipulation for the protection of American seamen from impressment into the British naval service, or otherwise to secure them against those shameful imprisonments and detentions which have become a national grievance to the United States: although in the 23d article he has stipulated, on behalf of Great-Britain, "that British ships of war, with their officers and crews shall be hospitably received in the ports of the United States, paying due respect to the laws and government thereof; and that the officers shall be treated with that respect which is due to the commissions they bear; and if any *insult* should be offered to them by any of the inhabitants, all offenders in this respect shall be punished as *disturbers of the peace and amity between the two countries.*"

He has omitted to make any stipulation for the protection and security of the commerce of the United States to Spain, Portugal, and the Mediterranean, against the depredations of the Algerines and Barbary corsairs; although he knew that this forms one of the most beneficial branches of our trade, yielding a large annual balance in specie in favor of the United States; and that the policy of our government has been, in all their treaties with the maritime powers, to obtain such a stipulation, it being expressly provided in both our existing treaties with France and Holland, that those powers shall use their good offices and best endeavours to obtain this object—Nor could he be ignorant of what is avowed by lord Sheffield, one of the British king's privy council, to be the true policy of Great-Britain; namely, to countenance and encourage Algerine depredations on the American trade, and to prevent us, as much as possible, from becoming carriers. And this omission is now the more to be regretted, since the recent official intelligence announced in all the newspapers, that the Algerines, under the mediation of Great Britain and Spain, have made peace with Portugal, in consequence of which, the Portuguese cruizers are to be recalled from the Mediterranean, and the Algerines again set loose on the commerce of the United States.

He has omitted to make any stipulation, or obtain any compensation whatever, for the negroes and other property carried away contrary to the treaty of peace, violating, it is believed, his positive instructions on this head.

He has omitted to except cotton, a staple article of the United States, as also melasses, sugar, coffee, and cocoa not being the growth, manufacture, or produce of a British West-India island, from the disgraceful prohibition imposed by the 12th article, on the export and carrying trade of the United States, admitting British vessels to take and carry away those articles wheresoever grown, from the United States to any part of the world, and restraining American vessels, only, from so doing.

The next class of objections to the treaty consists of acts of commission on the part of our negotiator, in stipulations injurious and dishonorable to the United States, as follow :

The second and third articles grant an equivalent for the surrender of an absolute right.—By the treaty of peace the posts were to be absolutely *surrendered*—The term *surrender* is comprehensive in the law of nations, and, as here used, cannot be construed to mean less than a total and entire evacuation, civil and military, of the territories of the United States. Mr. Jay has changed the meaning to a mere delivery of the naked walls of the posts in June 1796, provided the reason assigned by Lord Grenville in his correspondence with Mr. Jay for this delay, to wit, “that the British government were uncertain what operation the surrender of the posts would have on the Indians,” should not induce a further delay, or total refusal to deliver even the naked walls themselves. As to our territory, the British are to retain their possession of it, coextensive with the undefined limits of the terms, “*precincts and jurisdiction*,” the latter of which, it is well known, has been exercised several hundred miles within our territory; and this possession is guaranteed to them under the protection of the United States, even as British subjects, presenting the obnoxious spectacle of a British colony through a great extent of territory of the United States, and establishing that principle, which, in reference to France, has been so much deprecated, “*of fraternization*” under the discordant aspect of a co-mixture of *subjects* and *citizens*, of *monarchists* and *republicans*, owing allegiance, some to a foreign prince, and others to the republican government of the United States.—Again, as it is well known, that all the portages and carrying places now used by the British in their trade with the Western Indians, as well as those nations of Indians themselves, with whom any beneficial trade for furs and peltry can be carried

on, lie exclusively within the territories of the United States, the permission to the British to use those portages and carrying places, and hold free trade and intercourse with those Indians under the same duties, ferriages, and privileges with citizens of the United States, is an absolute grant and concession to the British, without equivalent, of a benefit now wholly ours, tending to secure to them all the advantages of the fur trade, and to rivet their influence over the western Indians; every stipulation relative to navigation and the importation of goods into that country by the citizens of the United States, being calculated to preclude the possibility of any competition on our part. Besides, if the construction of the term "now," in the 9th article of the treaty, should allow British subjects to hold lands within the United States, purchased at any time before the exchange of the ratifications of the treaty, the acquirement of state rights by British subjects may occasion serious questions, as to the power of extinguishing the Indian claims, which the intercourse will turn to the British interest. But, as if our negociator could not sufficiently rivet the chain of British influence over all the Indians of America, he has agreed, even without the participation or consent of Spain, that the river Mississippi shall be entirely open to both parties; and further that all the ports and places on its eastern side *to whichever of the parties belonging, shall be entirely open to both parties*; although he knew that the British hold no port or place whatever on that river; thus, under a covert semblance of reciprocity, conceding to the British the participation in another benefit exclusively ours, without any equivalent for the same, and extending, through these means, their influence over the south western as well as north western Indians. And all these stipulations, you will be pleased to remember, sir, are, by the treaty itself, declared to be permanent, that is, for ever irrevocable without the consent of Great Britain.

The 4th article contains a fruitful source for future war, because it puts the uncertainty it states upon a worse ground than it stood before; it being a well known historical fact, that by a similar omission in the treaty of Utrecht, in not providing a mode for ascertaining definitively the boundary line between the French and British possessions in America, the famous seven years war was produced between those two nations, which terminated in the peace of Paris, and a total relinquishment of all the possessions of France in America to the English.

The 6th article stands unsupported by any principle of treaty or of the law of nations. The able disquisition of Mr. Jefferson on this subject, in his diplomatic correspondence with Mr.

Hammond, is irrefragable on this point; besides, this article is exceptionable in the following instances.

It sanctions claims against the United States for British losses, when the legal impediments comprehended in the treaty of 1783, may not have occasioned those losses. Legal impediments as comprehended in that treaty, cannot extend further than to statutory regulations, peculiarly applicable to British subjects; yet, where the general rules of evidence applied to the case, prevented the recovery, this article authorizes a claim upon the United States for the loss, as in the instances of interest disallowed during the war, losses sustained by payments in depreciated paper money, and the defeat of evidence to establish open accounts, under the state laws.

It erects a court to controul the courts of the United States, which, and the forms of proceeding in which, ought to be the only constitutional resort in controversies proper for judiciary tribunals. If the court of commissioners should allow a rule of evidence contrary to that deemed admissible by the courts of the United States, the United States are placed in a situation to be made chargeable with the payment of debts, which the creditor could not recover against the debtor in the ordinary course of justice, allowing full operation to the treaty of 1783; besides a refusal to admit such evidence in the courts of the United States, instantly becomes a legal impediment, to be relieved against by the court of commissioners, even when the debtor is solvent.

It creates, in the assumption of these debts by the United States, a source of taxation, which is alike to be borne by the innocent observer of the laws, and the guilty infractor of them, without any reasonable prospect of being reimbursed by the real debtors.

It omits to require, on behalf of the United States, that just set off against these claims which the carrying away the negroes by the British, in violation of the treaty of 1783, allowed the United States to demand.

The 7th article is fallacious and delusory. It does not remove the effects of the British orders of November 1793, and January 1794, but allows them full operation; and only affects to offer relief in cases where those orders and the law of nations have been illegally or irregularly executed. Instead of pursuing the principle contained in the 6th article, of disregarding the decisions of courts, and placing the merits of the complaint before the commissioners, it obliges the commissioners to act in obedience to the decisions of the British courts, where those decisions have been regular and legal. If then the law of nations



and the orders of November and January have been regularly executed by those courts, the complaints of our government are remediless, and the true ground of those complaints abandoned by the treaty. Besides, the stipulation was unnecessary in cases of irregular or illegal condemnation, except where there was an insolvency on the part of the captors; and therefore the article wears, upon the whole face of it, a total relinquishment, on the part of our negociator, of the merits of our claims, and our merchants have no right to expect one shilling of recompense for their losses. Further, the last clause of this article, does not adhere to the principle supported in the 6th article, but again resorts to the merits of British complaints, and promises compensation; showing, that whenever American demands were submitted upon the principles of equity, the British negociator kept them in the courts for decision; and whenever their demands were urged, our negociator abandoned that principle.

The 9th article is ambiguous, and its construction doubtful; but let that construction be as it may, whenever, in the course of inheritance, alienage shall stop the course of descent, the right by escheat, accruing thereby to individual states, is taken away; and this principle may, and doubtless will, be extended to the territorial rights of the states.

The 10th article reverses the good old maxim, 'that an ounce of prevention is worth a pound of cure;' and our negociator seems to have thought that war first, and confiscation afterwards, was better than sequestration first and peace afterwards; since it is impossible to conceive that the greater evil, *war*, will not generally, if not always, produce the lesser evil, *confiscation*. But the article is destitute of all equality; Great Britain has fleets and armies, America none. Great Britain, by means of fleets and armies, can enforce the observance of our national duties towards her; we cannot resort to the same means for the same ends: But the annual balance of trade between the two countries is largely in favour of Great Britain; she has always a large amount of property or of debts in our possession, over which, the power of sequestration or confiscation, may be regarded as the American weapon of defence, preventive, equally, of future spoliations and depredations on our commerce, as of war itself. Humanity, therefore, is no less outraged by this stipulation than every principle of policy, justice, and national right.

Thus, sir, have I endeavoured to lay before you the omissions of our negociator, as well as some of the most obvious objections to the ten first articles, which, by the 28th article, are

all declared to be permanent.—The qualified ratification of the senate, rendering it probable that these ten articles may become the entire treaty, and thus the remaining eighteen articles relative to the trade and commerce between the two countries, which are all made to depend on the 12th article, suspended by the senate, may wholly fail, will induce, for the present, a postponement of the considerations resulting from the latter.

The political consequences of the first article, excite the most alarming sensations; to see, sir, a British colony established within the limits of the United States; to see yielded and ceded to this establishment, a great and undefined extent of our territory; to see the north western boundary of the United States, as it were, purposely left open, in order to secure to the British, the opportunity of future encroachment and enlargement of this colony; to see all our present exclusive benefits of trade and commerce with the Indians, yielded to the British without equivalent, thereby confirming their present influence over the Indian nations, and establishing, through the means of their new colony, a further system of intrigue and influence among all the western inhabitants of the United States: to see the principle of alienage prostrated, affording to the British the means, by future or past pretended purchases of the Indians, to establish a claim to a vast extent of the present western territory of the United States; to see a participation yielded in all our posts and places on the Mississippi, extending the chain of British influence through all western America, and drawing a back line on our frontiers from Florida to Canada; to see, sir, through all these causes, the completest political union between Great Britain and the United States, that was ever established between two nations, must fill the American mind with horror. To stand in this intimate political relation with the old, corrupt, and almost expiring government of Great Britain—that government which stands foremost in all the wars of Europe—which is at no time exempt from war for a period of seven years continuance—and which ever since the establishment of her public blessing, *a funded debt*, has been distinguished as the common disturber of the peace of the world, accords not with the spirit and principles of the free constitution and government of the United States, or with the genius, temper, and feelings of the republican citizens of America.—To the truth of this assertion, you, sir, have borne ample and honorable testimony, in that memorable letter to Lord Buchan, worthy to be recorded in letters of gold, dated Philadelphia, 22d April 1793, in which you thus express yourself:

“ My lord, the favorable wishes which your lordship has expressed for the prosperity of this young and rising country, cannot but be gratefully received by all its citizens and every lover of it; one mean to the contribution of which, and its happiness, is very judiciously portrayed in the following words of your letter, “ to be little heard of in the great world of politics;” these words, I can assure your lordship, are expressive of my sentiments on this head; and I believe it is the sincere wish of united America, **TO HAVE NOTHING TO DO WITH THE POLITICAL INTRIGUES, OR THE SQUABBLES OF EUROPEAN NATIONS;** but, on the contrary, to exchange commodities and live in peace and amity with all the inhabitants of the earth, and this I am persuaded they will do, if rightfully it can be done. To administer justice to, and receive it from, every power they are connected with, will, I hope, be always found the most prominent feature in the administration of this country; and I flatter myself, that nothing short of imperious necessity can occasion a breach with any of them. Under such a system, if we are allowed to pursue it, the agriculture and mechanical arts, the wealth and population of these states, will increase with that degree of rapidity, as to baffle all calculations, and must surpass any idea your lordship can hitherto have entertained on the occasion.”

Whatever, therefore, sir, may have been the views and influence under which our negociator acted, I persuade myself that he has not faithfully pursued either your sentiments, your opinions, or your instructions.

One remaining consideration, sir, will close this address. In all great and critical emergencies of our country, the safest, as well as wisest policy of its administration, will, doubtless, be to resort to and confide in the advice and opinion of the great constitutional council of the nation, composed of the free representatives of the people in both houses of congress assembled. The actual circumstances of the United States, in relation to the treaty with Great Britain, present a great and critical emergency of our country, fraught with questions as awful as any that ever agitated the American people; permit me, therefore, sir, without reference to the past conduct of the executive on this point, to refer you to a striking example, drawn from British history, of a British king on a similar occasion, confiding himself to the same great constitutional council of his nation, with a wisdom and efficacy, which merits to be followed even by an American president. At the close of the famous seven years bloody war between Great Britain and France, preliminary articles of peace were signed at Paris on the 7th of Novem-

ber, 1762; by these articles the political, territorial, and commercial interests of Great Britain were greatly affected. The king laid these preliminary articles before both houses of parliament, on the eleventh of the same month. On the thirteenth, the house of commons addressed him, returning thanks for his gracious condescension, in ordering the said preliminary articles to be laid before them, and declaring "that they have considered them with their best attention; and although to make peace and war be his majesty's just and undoubted prerogative, yet knowing how agreeable it must be to his royal mind to be informed of the *sense his people entertain* of the justice and wisdom of his measures, and his unwearied attention to their welfare, they are impatient to express their approbation of the advantageous terms of the said preliminary treaty, and to lay before him the applause of a faithful, affectionate, and thankful people." After this address, on the 22d of November, 1762, the said preliminary articles were ratified by the king, and formed the definitive treaty of peace between the two nations. Deign then, sir, to follow this example; submit the treaty you have caused to be negociated with Great Britain, to the consideration and advice of the two houses of congress, before its final ratification. Receive, in so doing, the affectionate regards, generous confidence, and grateful thanks of your fellow citizens of the United States, and thereby secure to yourself another, and an unfading, plaudit to the name of WASHINGTON.

C A I U S.

Philadelphia, July 21st, 1795.



## Observations on Mr. Jay's Treaty.

No. I.

**A**S the embassy extraordinary to Great Britain, from the appointment of the envoy, to the conclusion of the treaty, is unequalled in the annals of negotiation, it becomes us, the people, who are yet the *constitutional sovereigns* of the country, to consider it with attention, that it may in future either serve as a friendly beacon to point out a secure harbour in political storms, or avoided as a light perfidiously hung out to lure our unsuspecting bark on rocks and quicksands.

It is essential to the due consideration of the advantages and disadvantages of a treaty, to examine the contracting parties; because the same treaty may be good under some, and bad under other circumstances; thus, when Carthage gave up her ships, wealth, and arms in the second Punic war—the treaty might have been considered as good in relation to her then situation, humbled as she was by the Roman arms, and compelled to rely for her existence, as a nation, *solely on the justice and humanity of the Roman senate*; and yet a treaty of this sort would have been considered as base and abject, if it had been made immediately after the battle of Cannæ: and their senate (venal as Carthage then was) would not have been so lost to every patriotic sentiment as to have sanctioned its ratification. Britain, on the day of the signature of the treaty, was involved in a war with the bravest people in Europe; in the whole course of this war, she had experienced continued defeats and disgraces; her treasures were wasted upon allies that either deserted or were too feeble to afford her effectual aid; her debt had grown to the enormous sum of three hundred millions; her navy could only be manned by the most destructive burdens upon her commerce; her manufactures were languishing, her fleets were unable to protect her trade, which had suffered unexampled losses. And while she was sinking under her burdens, her antagonist was consolidating her government, and growing so rapidly in strength, reputation, and vigor, as to threaten her existence as a nation. The United States were, on the other hand, in the highest prosperity; their numbers had doubled since they had successfully measured swords with Britain; they possessed men, arms, military stores, and an ally, who was alone too powerful for her enemies. Sweden and Denmark, who had received insults from Britain, were ready to make a common cause with her; and as the marine of England and France were nearly balanced, the weight of America, had she been forced into the war, would have turned the scale, and have completed the ruin of the British commerce, without any other effort than that of granting letters of marque. Independent of which, without the violation of their neutrality, by those acts of sovereignty which no one would dispute their right to exercise, they could involve the British trade in the utmost distress, by an additional duty on British tonnage, by granting advantages to rival manufactures, by retaining debts due to her merchants, till the injuries ours had sustained were compensated. By following her example, both in the present and in the late American war, and suffering no part of the public debt to be paid to her citizens, till justice was done us, we could have forced her into

any measure that it was just or proper for us to ask. And indeed, so fully satisfied were the Americans, of every party, on the superiority of our situation, that no doubt was entertained of a favorable issue to Mr. Jay's negotiation; and all that his friends lamented, and his enemies rejoiced in, was, that the principal credit of them would be ascribed rather to the victories of France, than to the address of our minister. Under these happy auspices the negotiation began: we shall proceed to see how it concluded.

The next point of enquiry is into the objects of the negotiation; for as every treaty is an abridgment of the natural freedom of nations, no wise state ever enters into one, but with a view to remove some evil, or acquire some advantage. It is upon this ground, that many of our most distinguished patriots have been of opinion, that all commercial treaties were injurious trammels and bargains, in which we might probably be overreached at the moment, or which circumstances might thereafter render inconvenient; that America having nothing to sell but articles of the first necessity to the nations with which she deals, and affording a market to their manufactures, her own trade laws were her best treaties; since she may alter and modify them at pleasure: and, indeed, experience has justified their opinion: independent of the depredations we have suffered from the war, our trade enjoyed every advantage that we could reasonably wish. A commercial treaty was not the object of Mr. Jay's mission; the British nation, in direct violation of the treaty of Paris, refused to surrender the western posts; extended the limits of their jurisdiction, availed themselves of their situation to possess the Indian trade, and stimulated the savages to ravage our frontier: British officers ever accompanying them in their incursions, it became the dignity of the nation to demand a *delivery* of the posts—*reparation* for the loss of trade—a *compensation* for the expence of the war the British had excited with the Indians—a *public* punishment of the British subjects who had personally appeared in arms against us, with the removal from office of Lord Dorchester, who had, in his address to the Indians, encouraged them to violate the treaty of peace. Mr. Jay was thought the properest person to make this demand. Let us see how far he has justified that sentiment, in fulfilling his duty with respect to this single point.

By the 2d article of the treaty, the British promise to evacuate the Western Posts by the 1st of June, 1796. By the treaty of Paris, in 1783, they promised to evacuate with all convenient speed, which, we may judge by the speed with which they have found it convenient to evacuate all their posts in

France, Flanders, Germany, Holland, and Brabant, one would have supposed must have meant a much shorter time than eighteen months; so that all that the treaty acquires with respect to the posts, is less than we were entitled to, by the treaty of Paris. Surely we might expect better security than a mere promise from a nation which has already shown, in their violation of the past, the little reliance that can be placed on their future, engagements. By June, 1796, it is not improbable that our situation, or that of Britain, may be changed; what security shall we then have for the performance of the treaty? It is said, as has been already said (by those apologists whose arguments seem determined to find every ministerial measure right) that every treaty is a promise, and that if we are not to rely upon a promise, there can be no treaties.—I answer, that it is the practice of negociators, where the character of the nation, or other circumstances, give reason to suspect a violation of their engagements, *not to rely* upon a naked promise, but to expect some guarantee or surety for the performance; that in the present case, as the promise was evidently extorted by the pressure of existing circumstances, we should see to the performance while those circumstances continue to exist. It is evident, before Mr. Jay left this country, that the British were so far from intending to evacuate the posts, that they had determined to extend their limits; this may not only be inferred from all the encouragement they gave to the depredations of the Indians, but undeniably proved by Lord Dorchester's speech, which, though disavowed by Dundas, is now admitted to have been made in consequence of express instructions. The promise, then, to evacuate, has been extorted by French victories, by the humiliation of the British nation, and by their apprehension, that we might, at last, be provoked to do ourselves justice, while they were embarrassed with France. Surely, then, the evacuation should have been insisted upon, while these circumstances operated with full force;—what was there to impede an immediate evacuation of Oswego, which is only occupied by a lieutenant's command? what was to prevent our troops being put in immediate possession of Niagara and the upper posts, under an engagement to protect, for a limited time, the British property that remained there? In one week this might have been effected, considering the situation of the posts, upon navigable waters, as well as in one year.—May we not reasonably suppose, that the British still entertain a hope, that peace between them and France, dissensions between the United States and that Republic, the seeds of which are so plentifully sown by the Treaty itself, may enable them to violate their second, with the

same impunity that they have their first engagement. If the supposed non-performance of the treaty of Paris (which, however, has been so ably refuted by Mr. Jefferson in his correspondence with Mr. Hammond on that subject) has hitherto served them as a pretext for retaining the posts; how many such pretences must the complexity and obscurity of the present treaty afford? But suppose the war with France to continue, suppose they have the magnanimity to forgive our predilection for the enemy, suppose the spirit of our own nation to get the better of that disgraceful stupor into which a venal system has lulled it—suppose the increasing imbecility of Britain shall forbid her to hope for impunity in a further breach of faith, will it still be a matter of little moment, whether or not she retains garrisons in the midst of our territory for twelve months longer or not? are we not at this moment at war with the savages? is not this war attended with much expense to the nation, and much private distress? is not the blood of our citizens daily shed? these evils must continue as long as the posts are in the hands of the British; or a peace, if practicable, must be purchased by the United States at very considerable expense: were we to estimate the difference in this point of view, between an immediate evacuation, and one that is to take place in June 1796, it would certainly not fall short of one million of dollars, independent of the destruction of our fellow citizens, whose lives are beyond all price.—If to this we add the annual profits of the Indian trade, amounting to 800,000, it will appear that the United States lose near two millions of dollars, by the retention of the posts, supposing (which is at least problematical) that they shall be surrendered at the period proposed. Those who think with me, that decision on the part of our government, and firmness in our minister, could not have failed to effect an immediate restitution of our territory, will know to what account to charge this heavy loss of blood and treasure.

But was the evacuation of the posts all we had a right to ask on that subject; if the retention of them occasioned those expensive Indian wars which have so often drained our treasury and thinned our ranks.—If, for 12 years, we have lost thereby a lucrative branch of commerce, are we entitled to no compensation for these losses? If the honor of the nation has been insulted, both by lord Dorchester and the subjects of Great Britain under his command, are we to expect no reparation for these insults? Have we reason, from what we have seen of Mr. Jay's correspondence with Lord Grenville, to presume that any has been asked? are we not assured that none has been obtained? What, then, is the boasted article, about which so



much has already been said, which was the only one communicated to the public, as the only one that it was imagined would bear the light? what is it but a declaration on the part of Britain, that though she had already stripped us of millions, though she has occasioned the death of thousands of our fellow citizens, yet she now *promises*, that if we will let her pocket another million, and pay as much more out of our own treasury for a peace with her Indian allies, she will consent, in case the war with France should continue, and she should be too weak to contend with us, to let us possess *our own territory*. And what is our submission to these terms, and the unrequited insults we have received, but the lowest political degradation? If it is said that these were the best terms that could be obtained, I boldly deny the assertion; the state of Europe, the state of England itself, their submission to Denmark and Sweden, even to the little state of Genoa, warrant the denial. But should it even have been otherwise, it would have been infinitely better, both in point of honor and interest, to have waited, after having spoken with dignity of our rights, till circumstances should have enabled us to enforce them, than to have relinquished our well founded claim to a compensation of at least ten millions; to have relinquished that satisfaction which our national honor demanded; can we doubt that if we were ourselves too weak, which I am far from supposing, that the magnanimity of France would have permitted her to conclude a peace with England, without procuring us the satisfaction which her guarantee of our territories entitled us to ask? I am warranted in asserting, from the best authority, that she would not.

C A T O,

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 No. II.

**T**HE next transaction of the treaty of Paris, for which we were entitled to compensation, is that by which they engaged not to carry off negroes or other property. To enforce this stipulation, the commander in chief, by the order of congress, sent colonel Smith and Mr. Benson to New York; who, finding it impossible to prevent property to a considerable amount from being shipped, took an account of so much as came to their knowledge.—What satisfaction has Mr. Jay procured to the United States for this loss? Are commissioners

appointed by *choice* or by *chance*, for the liquidation of these accounts? Has the British government rendered itself liable for them? When Mr. Jay was so solicitous to secure to the British merchants every item of their demands, with interest and *damages*, would it not have been proper to have reflected upon those his country might claim?

The third demand, and perhaps the best founded of any made by a free country, was that which related, not merely to the violation of our flag, nor to a point of national honor only, nor to the infraction of treaties, or the withholding our territories, but to what is infinitely dearer than either, to the personal liberty of our citizens. Before Mr. Jay left this country, it had been the common practice of the British to press American seamen, not only from our vessels at sea, but in the very harbour of London, and with such distinguished contempt did they treat us, that the government not only winked at it, but their judiciary, in defiance of their own laws, authorized it. A seaman having found means (a matter of no small difficulty when in the hands of a press-gang) to procure a habeas corpus, the captain of the ship of war returned on the writ, that he was a British subject; and though the seaman had certificates and witnesses to prove that he was an American citizen, the judge refused to admit them, and declared that the captain's return was conclusive evidence; from which time to the present moment, it has been the common practice of the ships of war, even within sight of our own harbours, to tear that valuable class of citizens from their domestic enjoyments, from the bosom of their families, to be subject to military discipline and imprisonment. By a tame submission to these measures, we withhold that protection which is due to every citizen, and which indeed is the great end of government. We man the fleets of the enemy of our ally; disable our merchants from availing themselves of all the advantages we might derive from our neutrality, and justify our seamen in quitting a country in which they have no security, even for personal liberty, to seek it in foreign service.—Of this resource, however, Mr. Jay has endeavoured to deprive them. Surely it would have been his duty, when he was consigning such as went into the service of our ally, to an infamous death, to have obtained some satisfaction for the wrongs they had suffered while under the protection of their national flag: yet upon this subject the treaty is wholly silent. Perhaps the envoy extraordinary believed, that any stipulation in their favor, would have derogated from his assertion, that America relied *solely* on the justice and magnanimity of his Britannic majesty.

If the British merchants are entitled to the payment of those state demands, which the tyranny of their own government disabled their ruined debtors from discharging, how much more justly may our injured seamen, forced from their native homes, subjected to a brutal tyranny they detested, and compelled to fight against the people they loved; how much more, I say, are they entitled to payment for their loss of time, with interest and damages for the injuries they have sustained? yet no commissioners are appointed to hear their demands; no national security is pledged for their indemnification; no satisfaction is made to the insulted honor of the nation; no officer, that has outraged the laws of nature and nations, is punished or even removed from the command which he has so unworthily exercised. On the contrary, Lord Grenville, fearful that the people might at length be wearied with repeated insults, and resent them upon such of their authors as daily frequent our ports and harbours, and repay our mistaken hospitality with insults, hath expressly stipulated, in the 23d article, "*That the officers shall be treated with that respect which is due to the commissions they bear; and if any shall be insulted by any inhabitants, all offenders in this respect shall be punished as disturbers of the peace between the two countries.*" This article not only deserves consideration, as forming a striking contrast to our shameless indifference for the injuries and insults our own officers and men have actually received, but as laying the foundation for future differences with Great Britain, whenever she shall find it convenient to deny us some stipulated right, under pretence that the treaty has been violated. Though this article professes to be mutual, yet it is evidently without reciprocity; because we have few or no officers who could avail themselves of it, while our cities are crowded with persons who boast a royal commission: These have, upon every occasion, manifested a disposition to assume airs of superiority and to insult our citizens; nor have they been restrained but by the fear of personal chastisement from lording it over us in our own coffee houses. This article being totally undefined, will be construed by every officer according to his own sense of the respect that he thinks "*due to the commission he bears,*" and every coffee house broil must, in future, become the subject of national discussion.

As the treaty appoints no tribunal for ascertaining the *respect due to a British commission*, so also it leaves us in the dark as to the power that is to punish the unfortunate American who fails in the respect due to the swaggering captain of a cutter, or the fat purser of a frigate; as he is to be considered a disturber of the peace of two nations (to suppose either nation may

punish him) and he will probably be delivered up to Great Britain to be treated as a pirate.

Let me ask Mr. Jay, what principle of justice or necessity dictated this article? Do not the existing laws of the country protect every man? Is it not enough that our constitutions have organized courts for the special benefit of foreigners, to the injury of our own citizens? Did it become us, with daily examples before our eyes of the insolence and injustice of British officers, to bury in silence the wrongs we had received from them, and enter into special stipulations in their favor?

C A T O.

[TO BE CONTINUED.]



## Philadelphia Address.

*To the President of the United States.*

The Address of the Subscribers, Merchants and Traders of the  
City of Philadelphia,

*Respectfully sheweth—*

**T**HAT, confiding in the wisdom, integrity, and patriotism of the constituted authorities, we have forborne to offer our opinions on the merits of the treaty pending between Great Britain and the United States; though, as merchants and traders, our interests are more immediately concerned than those of any other class of men amongst us; as well on account of the indemnity therein stipulated for past losses, as for the security we apprehend it will give to the immense property employed, by the merchants of the United States, in their foreign commerce.

But seeing, that other citizens have expressed their opinions upon this important subject, and fearing lest our silence should be construed into an acquiescence in those opinions, we deem it our duty, explicitly and publicly, to avow our approbation of the conduct of the senate of the United States; believing, that a different conduct respecting the treaty, would have subjected us to the imminent hazard of war, with all its concomitant evils; and more especially, as provision is made for the esta-

blishment of public and private credit—a continuance of peace, with all the advantages under which our commerce flourishes—and the further improvement of our country, now progressing in a degree elsewhere without example.

These are advantages and blessings, which, in our opinions, greatly outweigh all the objections to the treaty, generally; and, as further negotiations are recommended for obtaining a less limited intercourse with the British West India islands, we hope, that it will be rendered still more beneficial to this country.

Such being our sentiments, we submit them freely; and in confidence, that as they have not been hastily formed, so they will not be less deserving of consideration.

Thomas Willing	William Montgomery	Adam Mendenhall
Matthew Clarkson	William Newbold	Chamless Allen
Joseph Ball	Henry Pratt	Redmund Byrnes
Thomas Fitzsimons	Abraham Kintzing, jun.	Ebenezer Large
Tho. M. Willing	James Stewart	John Thompson
Robert Waln	James Barr	John Waddington
Archibald McCall	Thomas Canby	Robert Henderson
Joseph Sims	John Wall	Thomas Newbold, jun.
George Plumsted	Levi Hollingsworth	Anthony Taylor
Robert Stevenfon	George Latimer	John Shields
William Sitgreaves	John Perot	Joseph Cooke
Josiah Hewes	Peter Mackie	Alexander Elmsley
John Steinmetz	John Instone	Andrew Tybout
John M. Nesbitt	Robert Smith	Israel Jones
John Nixon	Joseph Clark	Henry Sheaff
James C. Fisher	William Taylor	Robert E. Griffith
James Cox	Samuel Price	Samuel Pleasants
Samuel W. Fisher	Henry Drinker, jun.	Mark Rodes
Richard Rundle	Thomas Shaw	Charles Marquedant
Robert Morris	Israel Brown	Joseph Donaldson
Nathan Sellers	Timothy Paxton	John Guier
Isaac Wharton	Samuel Hodgdon	Joseph Gray
John Miller, jun.	William Davis	William Guier
James Pemberton	Abraham Dubois	Jacob Barge
John Nicholson	Jacob Baker	William Sheaff
Tho. Murgatroyd	John Morrell	David Evans
William M Murtrie	James Henderson	George Harrison
Peter Blight	John Inskeep	S. Sterret
James Yard	John Campbell	John N. Hagenau
Patrick Moore	Paul Beck, jun.	John P. Sanderfon
Zaccheus Collins	George Pennock	Daniel Drinker
Mark Prager, jun.	Ellifston Perot	John Poultney
James Crawford	James Hartley	Thomas Poultney
Joseph Anthony	James Boggs	Robert Bafs
William Cramond	Richard Potter	Richard Wistar
J. G. Wachsmuth	William Maffey	John Hopkins
Curtis Clay	John Maybin	Abraham Singer
Philip Nicklin	John Stille, jun.	Gideon Hill Wells
John Leamy	Jonathan Willis	Adam Zantzinger
Isaac Hazlehurst	William Lane	George Keppeler

Michael Roberts	George Bickham	Jonathan Robeson
George D. Thomson	Wilson Hunt	James Campbell
Edward Thomson	Abijah Dawes	Jehu Hollingsworth, jun.
Thomas Roberts	William Young, bookfeller	James Steel
Eden Shotwell	James Smith, jun.	Benjamin Thomas
William Chancellor	Richard R. Smith	Thomas Cuthbert
John Davis	John Clark	John Rudolph
John Smith	David Lewis	Richard Sweetman
Abraham Garrigues	Francis West	Seth Willis
Peter Wiltberger	George Dougherty	William Clark
William Smith	Jacob Shoemaker	John M'Dermott
George Roberts, jun.	Pearson Hunt	Isaac Lloyd
David Kempton	John Simson	Aaron Welsh
Anthony Hallowell	William Lucas	Richard Flower
George Roberts	Nalbro' Frazier	Samuel Read
James Reynolds	John Frazier	Thomas W. Francis
Benjamin Davies	John B. Evans	George Sibbald
Griffith Edwards	Joseph Richardson	Dominick Joyce
William E. Maddock	John Sitgreaves	Owen Jones
William Holderneffe	John Travis	J. Pritchard
Hilary Baker	Robert Raine	Eli Canby
Benedict Dorsey	Robert Gray	Samuel Clarkson
Tench Francis	Robert Harwood	Levinus Clarkson
Isaac Paxon	Israel Whelen	William Allibone
Luke Thomas	David Lenox	John Skyrin
John Harland	John Duffield	Malcolm M'Donald
Peter W. Gallaudet	Alexander Fullerton	Charles Mulvey
William Beaven	Joseph C. Fisher	Joseph Lownes
Joshua Clibborne	John Carrell	John Welsh
James M'Crea	Benjamin Hornor	Philip Reilly
James Bacon	David Lapsley	Thomas Bell
Josiah L. Coates	John Wagner	James Paul
John D. Blanchard	John Achley	Kearney Wharton
Thomas Paschall	Samuel Howell	Alexander Tod
William Wells	William Miller, jun.	James Greenleaf
Samuel Wilcox	Peter Brown	Thomas Ewing
Amos Wickersham	George Guest	John Kaighn
Robert Wharton	William L. Sonntag	Charles Jarvis
Daniel Ruff	Israel Pleasants	Samuel W. Jarvis
Joseph Parker	Jeremiah Parker	John Guest
William Folwell	John Elmsley, jun.	William Zane
John Redman	John Evans	James Gallagher
Charles Harris	James Lyle	Henry Manly
John Lorain, jun.	Jeremiah Warder	Matthias Keely
Thomas Cumpston	James Ryan	Richard Hopkins
Philip Wager	Joseph Waln	Charles Pleasants
John Melbeck	John Ketland	Joseph Pleasants
Godfrey Baker	John Philips	Benjamin Hornor, jun.
John Baker	John C. Stocker	John Field
Godfrey Haga	Richard Thompson	John Stille
John Vaughan	Daniel Smith	Joseph Claypoole
Thomas Coates	George Scott	Joseph Anthony, jun.
Frederick Boller	Francis Gurney	Josiah Twamley
John Jordan	Nathan Lewis	William Wistar
Samuel Mecklin	William Steel	Edward Shoemaker
Edward Penington, jun.	John Shallcross	Lawrence Seckel
Joseph Hough	David Walker	James Miller
Daniel Sutter, jun.	Joseph Russell	Caleb Lownes

Charles Shoemaker	William Harland	Joshua Lippencott
John Watfon	Alexander Miller	John Haworth
Thomas Callender	Samuel Coates	Thomas Clifford
George Armroyd	John Taggart	John Clifford
Richard Tunis	Thomas Orr	Jacob Parke
Thomas P. Wharton	Richard S. Footman	George Fox
John Watfon	William Mott	Abraham Carlisle
John Wharton, jun.	Thomas Bradford	Joseph Ricardo
Samuel Allen	Thomas Hockley	Jacob Knorr, jun.
William Redwood	Robert Wescott	Thomas Ryerson
Mordecai Lewis	James Rees	Peter Kuhn
Alexander Anderfon	John Fries	Frederick Heifz
E. E. Maddock	William Dawfon	Henry Seckel
Peter Reeves	Thomas Shoemaker	Joseph Higbee
William Poyntell	Benjamin F. West	Ephraim Clarke
George McCall	Jacob Downing	Charles Maffey
Moses Cox	Edward Bartlett	Thomas Morgan
Frederick Kesselman	Emanuel Walker	Edward Randolph
Charles Robertfon	George Peter	Benjamin Shoemaker
Isaac Oakman	Phillip Care	John Paul
James Sawyer	Crooke Stevenson	Samuel Shaw, jun.
James Steel	Jacob Clements	Thomas Hammett
Nathan Thomas, jun.	Bankfon Taylor	Jacob Ridgway
Robert Andrews	George Meade	Samuel Shaw
Robert C. Latimer	Magnus Miller	William Sanfon
John Miller	Richard Footman	Samuel Meeker
Samuel Cummings	James Ash	Benjamin Holland
Samuel Murdock	John Bohlen	William Miller
William Buckley	Hugh Hodge	Alexander Murray
John Barnes	Nathan Field	Thomas Harper
John Pinkerton, fen.	Charles French	Charles Rofs
Jonathan Harvey	Joseph Burroughs	Hugh Holmes
W. B. Goldthwait	Hugh Ely	William Yardley
James Moore	Thomas W. Smith	Patterfon Hartthorne
Benj. W. Morris	Andrew Hodge	Samuel Jackson
George Willing	William Drinker	Samuel M. Fox
Ezekiel King	Samuel Spaulding	Thomas McEwen
Thomas Randall	William Compton	Matthew McConnel
William Lewis	Morris Robefon	Thomas Hale.
James Bringham, jun.	William Lippencott	

## PRESIDENT'S ANSWER.

GENTLEMEN,

**I** RECEIVE, with great sensibility, your address on the subject of the treaty lately negotiated between the United States and Great Britain, expressing your confidence in the constituted authorities, and the concurrence of your opinions with their determinations, on this highly important subject. Such sentiments, deliberately formed, and proceeding from men whose interests are more immediately concerned than those of any other classes of my fellow citizens, cannot fail to strengthen that just confidence in the rectitude of public measures, which is essential to the general welfare.

Go. WASHINGTON.

R

## D I S S E N T

*Of a Number of the Citizens of Boston.**Boston, July 15th, 1795.*

**W**HEREAS the votes adopted at a late meeting of this town, relative to the treaty of amity, navigation, and commerce, between the United States and his Britannic majesty, have been represented as expressing the unanimous sentiments of the merchants and other inhabitants upon that subject.

We, the subscribers, unwilling to be implicated in the number of those, who approve of the doings of that meeting, and reserving to ourselves the right of expressing our opinion, individually, upon the merits or demerits of public measures, do hereby declare our disapprobation of, and dissent from, the votes of said meeting:

Thomas Russell  
William Mackay  
Mungo Mackay  
John C. Jones  
Joseph Russell  
Charles Miller  
Samuel G. Perkins  
David Sears  
Theodore Lyman  
William Wetmore  
William Powell  
Francis Butler  
Edward Edes  
Alexander Hill  
Stephen Codman  
Henry Smith  
Joseph Coolidge  
Jonathan Mason  
William Phillips, jun.  
Charles Sigourney  
Charles Vaughan  
Stephen Higginson  
William Shattuck  
Daniel Sargent  
Thomas Amory  
James Perkins  
Daniel Sargent, junr.  
Samuel Blagge  
Samuel Parkman  
William Parsons  
Lemuel Gardner  
William Brown  
Timothy Williams  
Eben Parsons,

Joseph May  
B. C. Cutler  
Gorham Parsons  
Henry Newham  
Samuel Elliot  
Samuel Gardner  
M. C. Groves  
David Pearce, jun.  
Sylvanus Gray  
Samuel Paine  
Thomas Thompson  
Benjamin Homer  
John Gray  
Joseph Head  
Elisba Sigourney  
William Bordman, jun.  
Simon Elliot  
Joseph Foster  
Perrin May  
John May  
Jonathan Merry  
Nathan Goodale  
Joseph Roby  
Nathaniel Goodwin  
Ephraim Elliot  
Eliakim Morse  
Isaac Davis  
Henry Hill  
Jeremiah Khaler  
George Domett  
Joseph Howard  
Jedediah Parker  
John T. Sargent  
John Codman,

David Greene  
Allen Crocker  
Joseph Laughton  
Joseph Pope  
Henry Hunter  
Samuel Wallis  
James Cutler  
Benjamin Buffey  
John Amory, jun.  
P. Conner  
Samuel Salisbury  
Francis Amory  
Minot Thayer  
Samuel Miller Thayer  
Joseph Ripley  
Nathaniel Balch  
William Richardson  
Joseph Carnes  
John Winslow  
Thomas Greenleaf  
Lewis Carnes  
Edward Cushing  
Luke Baker  
Samuel Sumner  
William Spooner  
Thomas Brewer  
Stephen Higginson, jun.  
Samuel Salisbury, jun.  
Paul Revere  
J. Buffey  
Jeremiah Bumstead, junr.  
Joshua Davis, jun.  
Robert Davis  
Josiah Knapp



Edward Edes, jun.	Ebenezer Frothingham	Benjamin Fossenden, jun.
Joseph Hufley	Moses May	Elisba Ticknor
William Mackay, jun.	Stephen Rawson	John Kennedy
William Stackpole	Samuel Davenport	Samuel Ridgway
Charles Miller, jun.	Samuel Sprague	Francis Greene
Lewis Hayt	Moses W. Dana	Amos Lincoln
William Stevenson	Isaac Vose	William Smith
Isaac Rand	A. Langford	Thomas Curtis
Benjamin Russell	Daniel Weld	John Howe
Ebenezer Lewis	Zeva Thayer	Benjamin Sumner, jun.
Samuel Smith	Aaron Warren	John Webb Checkley
Isaac Davis, jun.	David Cobb	Joseph Crocker
William Dall	Samuel Bowen	Moses Eayres
Josiah Quincy	John Williams	William Ellison
James Clark	B. Butler	Daniel Bates
John Crease	Thomas Dennie	John Homans
William Cravain	John McLean	Jonathan Hunnewell
Lemuel Hayward	Charles Vose	James Ray
Joseph Whipple	Rufus Davenport	P. R. Dalton
Edward Tuckerman	William Porter	Henry Roby
Nathaniel Curtis	John Boffon	Redford Webster
Ezra Whitney	William Wood	Thomas Hearsey
Ephraim May	John Osborne	Samuel Beales
Richard Faxon	Robert Robbins	Andrew Leach
Daniel Greenleaf	L. Edes	Samuel Danforth.



## DISSENT

*Of a Number of the Citizens of Trenton and its Vicinity, from the Proceedings of the late Town-Meeting.*

*Trenton, August 14th, 1795.*

**A** PUBLICATION having appeared in the New Jersey State Gazette of the 4th instant, containing certain resolutions disapproving of the proposed treaty between the United States and Great Britain, said to have been adopted at a general meeting of the citizens of Trenton and its vicinity, held the 29th day of July, 1795—We, the subscribers, citizens of Trenton and its vicinity, not having concurred in, and not approving of, the said resolutions, thus publicly testify the same, and declare our entire satisfaction and confidence in the constituted authorities of our country, and our determination to acquiesce in such measures as have been or may be finally adopted, relative to the said treaty, by such constituted authorities.

## Citizens of Trenton.

* Isaac Smith	Ogden Woodruff	Rens. Williams
* Samuel Leake	John Riggs	Joshua Wright
Philemon Dickinson	Joseph Bond	William Rippin
Charles Axford	* An. Dn. Woodruff	Charles Axford, jun.
* James F. Armstrong	N Belleville	Josiah Appleton
James Ewing	Nathan Beakes	Thomas Rippin
George Campbell,	Ebenezer Cowell, jun.	John Harding
James B. Machett	* A. Chambers, jun.	William Patterfon
Maskell Ewing	J. Chambers	John Robinson
Samuel Dickinson	Peter Teale	Alexander Chambers
* J. Rhea	Bernard Handlon	Tretwell Wright
B. Smith	Silvester Doyle	John Musgrove
Thomas Yardly	Jonathan Doan	Stephen Welch
Peter Howell	Benjamin Jones	James Yard
A. Hunt	Robert Taylor	Henry Pike
Archibald W. Yard	Micajah How	James Monjoy
Pontius D. Stelle	George Holcomb	Robert Murry
John Guild	George Beatty	Isaac Yard
Abraham G. Claypoole	Mahlon Reed	George Rozell
Lambert Cadwalader	William Reeder	William Yard
Aaron Dunham	Joseph Brittain	William Musgrove
George Davis	Job Scott	John Hooton
William Hay	Abraham Bloodgood	Anthony Bishop.
John Coryell, junr.		

Citizens of the vicinity who happened, occasionally, to be in town.

Robert Pearson,

Robert Pearson, jun.

William Pearson.

N. B. Those persons to whose names asterisks are placed, were out of town before notice of the meeting was given, and did not attend said meeting; and of the other subscribers, it is said, not more than three or four persons attended, who totally disapproved of the said proceedings.



## Proceedings at Trenton.

AT a numerous and respectable meeting of the citizens of Trenton and its vicinity, convened on the 13th August, 1795, at the state-house, General Frelinghuysen, one of the senators of this state in the congress of the United States, attended, and at the request of the citizens present, consented to give his sentiments on the treaty now depending between the United States and Great Britain; whereupon it was

*Resolved (without reference to the merits of the said treaty)*  
That the meeting have the fullest confidence in the honor, virtue, and integrity of Frederick Frelinghuysen, one of the senators of

this state; that this meeting are fully of opinion that in voting for the said treaty, he was actuated by the purest principles of patriotism; and that the thanks of this meeting be given to him for the candor with which he has stated the reasons which induced him to vote for the said treaty.



## PROCEEDINGS

*Of the Boston Chamber of Commerce, at a large and respectable Meeting, convened at the Request of a Number of the Members, and held at their Hall, on Tuesday, August 11th, 1795, by Adjournment, to consider of, and express their Sentiments relative to, the Treaty made by Mr. Jay, in behalf of the United States, with Britain.*

A MOTION was made to have the treaty read, which was done: it was then moved to discuss, and pass upon, the treaty, article by article—this motion was objected to, because the subject had been so fully and so publicly discussed, and the members had had so much time to study the treaty, and deliberately to form their opinion, that every one must be ready for the question—it was therefore dispensed with.

A motion was then made in the words following, viz.

Resolved, as the opinion of the chamber, That the recommendation of the senate to the president of the United States, to ratify the treaty, as amended by them, was wise and prudent; because it settles, in a fair and amicable manner, points of difference between the two nations, which must otherwise necessarily subject our country to a humiliating submission to British impositions and injuries, or induce a war, with all its horrors and distresses, to seek redress; and because, when considered collectively, the tendency of the treaty must be to promote and extend, rather than to injure and restrain, our commerce.

This motion gave rise to a lengthy and free discussion of the object at large, after which the question was put by the president, when the same was adopted with one dissentient only.

Another motion was then made in the words following, viz:

Resolved, therefore, That the chamber cannot but lament and disapprove every attempt to excite an opposition to the treaty, in the minds of the people, and to detach their confi-

dence from the government of the union; because in a government like ours, a firm reliance of the people in the wisdom and integrity of those authorities, which they have themselves constituted to manage their public concerns, and a cheerful acquiescence in the decisions of rulers of their own appointment, are indispensable to secure the peace, the honor, and the happiness of the community.

This motion was also put by the president, after a short discussion, and was adopted with one dissentient only.

Another motion was then made in the words following, viz :

Resolved, That the president of the chamber be requested to forward an authenticated copy of the preceding resolutions to the president of the United States, and to publish the same in the public newspapers.

This motion was put also and passed unanimously.

The question upon the whole was then put by the president, after a few observations, and passed unanimously in the affirmative.

THOMAS RUSSELL, President.



## R E S O L U T I O N S

*Of the Citizens of the Borough of York (Pennsylvania) and its Vicinity, at a Meeting held at the Court-house, on Monday, the 17th of August, 1795, for the Purpose of taking into Consideration, Measures proper to be pursued upon the Subject of the Treaty between Great Britain and the United States.*

**A**FTER a full and deliberate discussion of the subject, the following resolutions were moved, and unanimously adopted.

1st. Resolved, That although we consider it the constitutional right of the citizens of the United States to address the president by way of petition, memorial, or remonstrance, on any subject, concerning which the constitution has vested him with a negative or affirmative; yet, that there may be certain situations in which it would be exceedingly improper, and inconsistent with their duty, so to do.

2d. Resolved, That we consider the present occasion as one of those, on which it would be highly improper to advise the president not to give his affirmative to the pending treaty;

as such conduct would seem to be interfering with the constituted powers, which ought never to take place but in cases of the greatest necessity; that it would betray a want of confidence in the senate, and in the president; that it would tend to weaken our government, and give foreign nations a bad opinion of its wisdom and stability; and that it would have a direct tendency to encourage animosities, factions, and divisions among ourselves.

3d. Resolved, That we have a full and entire confidence, that the president of the United States will never exceed his constitutional powers, and that in the exercise of them he will combine, as he always hitherto has done, wisdom with integrity.

4th. Resolved, That we deem the constitutional guard upon the executive as sufficiently strong, even where less confidence is due, in requiring the advice and consent of two thirds of the senate as an essential requisite to the ratification of treaties.

5th. Resolved, That we cheerfully leave the Treaty between this country and Great Britain where the constitution has directed it to be left; feeling the most perfect reliance that the honor and interest of this country, will be fully considered in a decision upon it.

Resolved, That a copy of the foregoing resolutions be transmitted by the chairman of this meeting, to the president of the United States.

JOHN EDIE, Chairman.



FROM THE GAZETTE OF THE UNITED STATES.

*Philadelphia, 13th August, 1795.*

*Mr. Fenno,*

MUCH has been said as to the part Mr. Thomas Pinckney, the minister from the United States, resident with the court of London, had in the negotiations which ended in the treaty of amity, commerce and navigation with that court, lately ratified by a constitutional majority of the senate of the United States; and the author of a paragraph in the Aurora of Tuesday, undertakes to say that the reports of Mr. Pinckney's having approved of the treaty, were calumnious to Mr. Pinckney and false.

The enclosed extracts, which are sent to you for publication, will serve to inform the public on this point, and will show the author of the paragraph in the Aurora, that he is mistaken.

I do not suppose that any person of common sense or the smallest information, will consider a treaty as good or bad because made or approved by this or that minister. The instrument should certainly be weighed and judged of by its own intrinsic merits or defects. Nor do I believe that any senator who voted for the treaty did so in blind compliance with the opinion of any other man, however respectable the author of that opinion might be.

The integrity and true patriotism of Mr. Pinckney are above all suspicion. His great abilities, his thorough acquaintance with, and his anxious attention to, the interests of America will never be doubted by those who know him. What then will the opposers of the treaty say, when they read the sentiments of a minister whom they profess to admire, who was on the spot, fully acquainted with the real situation of affairs, and the difficulties Mr. Jay had to encounter in the negotiation, and whose letter to the secretary of state shows, in the most plain and unequivocal terms, the dreadful alternative, A WAR, the United States must have encountered.

CAROLINIENSIS.

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*Extract of a Letter from Mr. Jay to the Secretary of State, dated London, 19th November, 1794.*

“ I OUGHT not to omit mentioning the acknowledgements due from me to Mr. Pinckney, with whom I have every reason to be satisfied, and from whose advice and opinions I have derived light and advantage in the course of the negotiation. His approbation of the treaty gives me pleasure, not merely because his opinion corresponds with my own, but also, from the sentiments I entertain of his judgment and candor.

“ My own opinion of the treaty is apparent from my having signed it;—I have no reason to believe or conjecture, that one more favorable to us is attainable.”

*Extract of a Letter from Thomas Pinckney, Minister Plenipotentiary, to the Secretary of State, dated London, 16th November, 1794.*

“ MR. JAY communicated freely with me on this subject during the course of the negotiation; and I have witnessed the great difficulties which have occurred in adjusting several of the articles. Although some points might have been arranged more beneficially for us, if the treaty had been dictated entirely by the

United States, yet when it is considered as a composition of differences, where mutual complaints had rendered mutual concessions necessary to establish a good understanding, I think it may fairly be said, that as little has been conceded by Mr. Jay, and as much obtained for the United States, as, all circumstances considered, could be expected: the business, upon the whole, has been concluded more beneficially for us than I had any hope we could obtain by negotiation six months ago, and, in my opinion, places us in a more advantageous situation than we should have been in by becoming parties to the war."



## R E S O L U T I O N S

*Of the Citizens of Richmond, generally convened, at the Capitol in the said City, on Wednesday the 29th day of July, 1795, for the important Purpose of taking into Consideration the Treaty of Amity, Commerce, and Navigation, between the United States of America and his Britannic Majesty.*

GEORGE WYTHE, Chairman.

**T**HE citizens of Richmond, awfully impressed with the momentous crisis of American affairs—hold it not only their right, but their bounden duty, to express their sentiments to the chief magistrate of the United States, on a subject which ought to engage the mind of, and be carefully examined by, every citizen of America—and which, no doubt, has called forth the attention of a great part of Europe—we mean the proposed treaty between America and Great Britain, as lately made public. And though they feel a secret satisfaction, in the firm belief, that the executive of the United States coincides in opinion with them; yet, as the situation of the head of that department, under the particular circumstances of the present case, may wish for the general sentiment of his fellow citizens, before an exercise of his own judgment on so important a subject, is finally made; a judgment, not to be recalled by him or us, without the most dreadful consequences, perhaps, ensuing; they therefore proceed to state their opinion thereon.

*Resolved, unanimously, That, considering the treaty now offered by Great Britain to America, to be*

Insulting to the dignity,

Injurious to the interest,

Dangerous to the security, and

Repugnant to the constitution, of the United States:

We, the citizens of Richmond, hold it, therefore, not only unbecoming freemen to be silent, but that under the strong impressions, which mature reflection has rivetted on our minds, we should deem it criminal, in the highest degree, not to give our entire and pointed disapprobation of this instrument.

*Resolved*, That Dr. Foulsee, Mr. John Mayo, Mr. Richard Adams, senior, Mr. Henry Banks, Mr. Andrew Duncomb, Mr. Samuel M'Craw, Mr. Alexander Quarrier, Mr. Thomas Mason, and Mr. John Stewart, be appointed a committee to frame an address to the president of the United States, on the foregoing principles, and report to a meeting to be held at this place to-morrow afternoon at four o'clock.

*Resolved*, That the citizens are earnestly requested to attend at the time and place specified in the preceding resolution.

Teste,

JAMES RIND, *Secretary*.



*August 1st, 1795.*

## R E P O R T

*Of the Committee chosen by the Citizens of Savannah (Georgia)  
convened in Christ-church, on Wednesday, July 29th, 1795.*

**T**HE committee appointed by their fellow citizens to take into consideration and arrange their objections against a certain treaty between plenipotentiaries of the United States and his Britannic majesty, signed on the 10th of November, 1794, Report,

That reciprocal benefit and mutual advantage are the only proper inducements for national negotiations, and ought to be the basis of all treaties between sovereign and independent nations.

That the objects which presented themselves for a negotiation with Great Britain, at the time when Mr. Jay was appointed to that mission, were in their nature truly interesting to the justice, honor and happiness, of the United States; among which we consider the procuring a compliance with the treaty of peace, obtaining compensation for recent spoliations on the property of American merchants, and preventing future repetitions of such injuries, as the most important. That, by the treaty above referred to, neither of these objects has been accom-



plished, nor has any political or commercial benefit in favor of the United States been attained; but on the contrary, a variety of concessions have been made to Great Britain, in violation of the treaty of 1783, and of our engagements with France and other nations, in subversion of the rights of the people, and if ratified, to the eternal disgrace and reproach of our government.

That the said treaty is calculated to contravene the acts of banishments and attainder, passed during the late American war, and to authorize the return of all persons included in them, without any condition, although that power is exclusively vested in the legislatures of the respective states.

That, by the treaty of peace, the right of property of the north western territory within the boundaries designated therein, was vested in the United States; and had that treaty been complied with, would, long ago, have been disposed of for their use: that the treaty lately made, whilst it necessarily implies an aggression, or at least a failure on the part of Great Britain, provides, not only an indemnity, but also, at our expense, a compensation to her subjects, and clogs the surrender of an acknowledged right, withheld for eleven years, with provisions tending to lessen the value of such surrender. This article and the next prove that Great Britain has so contrived the present treaty as to part with nothing on this head, even after the 1st of June, 1796, but the mere possession and expense of the posts in question. By the stipulation in favor of her settlers, whether they remain British subjects, or disguise themselves as American citizens, it is evident the profits of their trade will centre in Great Britain, and the connections and influence continue as extensive as ever with the Indian tribes; two objects appearing to your committee of more importance than the mere occupation of the ground; besides, as, from the nature of this trade, and the manner of carrying it on, there will be abundant opportunity, so there can be little doubt that (in a people so recently leagued in war with the savages against us) there will be sufficient inclination to defraud the American revenue.

That it gives to the subjects of a foreign nation the uncontrollable power and right of passing through the territory of the United States; a privilege which is contrary to the policy of all nations: that the navigation of the river Mississippi, although a right of the United States which cannot be questioned, may not be brought into operation without great difficulty and expense; and that therefore a participation of it ought not to have been stipulated for, without some reciprocal obligation, by which the beneficial effect of this right would have been promoted:

that, by our exclusion from the ports within the limits of the Hudson's bay company, the advantages of the Indian trade will be confined to British subjects: that it provides for the establishment of a tribunal unknown to, and in violation of, the constitution, which will have the power of reviewing the decisions of our courts, constitutionally made, and of impeaching the justice and legality of those decisions; the fifth commissioner is to be elected by lot, and upon this principle, we conceive it is to be determined by chance, merely, whether the United States are to be encumbered with the payment of large sums of money to British merchants, and to an unlimited amount. Your committee view this article as the more unwarrantable and unnecessary, because they are confident that in this state no legal impediments have been created against the recovery of debts due to British creditors since the treaty of 1783, but that, on the contrary, the courts of the United States have for several years past been in constant and active operation, for the purpose of enforcing the recovery of their demands, without any equitable allowance for the hardships and distresses of the war, or even for losses wantonly occasioned by the government and subjects of that nation. That, on the other hand, legal impediments have been created against the recovery of debts by American citizens in Great Britain, of which the celebrated case, *Nut versus Wright*, is one among many instances which might be cited.

It is entirely silent on that important subject, the restoration of negroes, and other property carried from this continent by the British troops, in direct violation of the treaty of 1783, to the disappointment, and, in many instances, ruin of the unfortunate citizens of the United States, who have suffered by this unwarrantable measure; whereas the British government and courts of law, where attempts have been made to recover by that means, have repeatedly held out assurances of compensation.

We consider that part of the treaty which makes provision for compensating the losses sustained by citizens of the respective parties, by means of illegal spoliations, as manifestly and grossly unequal and partial, and that, so far as it respects American citizens, it is altogether ineffectual; on their parts no application can be made to the commissioners until it shall have been ascertained, by going through a tedious course of judicial proceeding, whether any remedy can be obtained in that way: then the applications and proofs must be produced in Great Britain; whereas British subjects may apply immediately at home, and receive compensation, although the courts of

admiralty of the United States have been, and are constantly open to compel restitution where it is has appeared that captures of British property have been illegally made.

It provides for the subjects of his Britannic majesty of every description, without regard to banished persons, to hold lands in the territories of the United States in like manner as if they were natives; and at the same time holds out that American citizens may do the same in her dominions, where it is well known that, by the English laws, aliens are incapacitated from holding real estates; and the comparative quantity of lands held by the citizens of the one power and subjects of the other, bears no manner of proportion.

The privilege offered by this treaty of trading to the West Indies is so limited as to the burden of vessels, that it can afford little or no benefit; it leaves all the advantages subject to the controul of existing and future legislative restrictions and prohibitions: Even this paltry privilege is rendered of very small use to American merchants, by their being positively restricted from exporting the produce of the West Indies to any part of the world in their own vessels; and, in exchange for this pretended advantage, the treaty has relinquished the right of exporting cotton, the growth of our own soil, and one of the most important staples of the southern states, in American vessels to foreign ports.

Your committee deem it necessary to observe fully on the article relating to the West India trade, although its operation is suspended by the senate; and they cannot forbear to remark, that this article, so far as it respects the privilege of trading with small vessels, is the only one in that treaty which contains the smallest appearance of benefit to the United States.

It therefore appears to your committee extraordinary that the representatives of the people in senate, instead of rejecting this unequal and unrighteous contract altogether, have ratified every part except the 12th article, in consequence of which, every other article may be enforced, and this may be nullified, whereby the object of the West India trade will be put entirely out of view.

It appears to your committee that the clause which restrains the congress of the United States from increasing the tonnage of British vessels, is calculated to suppress the American revenue, is an infringement of a constitutional right, and will induce the necessity of straining the obnoxious measure of direct taxation to an impolitic degree.

We find that the said treaty, instead of preventing any further spoliations on our property by the British, contains a

provision calculated to promote repetitions of those injuries.

That it authorizes the capture and detention of our vessels, even on suspicion, and carrying the same into British ports, whenever met by British vessels, without any stipulation that compensation shall be made for unnecessary or unfounded detentions: That it authorizes searches of American vessels in every instance: That these stipulations are contrary to the general law of nations, interfere with the engagements between the United States and France, and expose American seamen to arrest and detention by British vessels.

It enumerates and acknowledges as contraband of war, various articles which by all our treaties with other nations are acknowledged not to be so, and invests Great Britain with the power of declaring what articles shall be considered, in future, as contraband. It enables that nation to defeat all the advantages which otherwise might accrue to the United States from a state of neutrality, during the existence of European war, and also is calculated to deprive a sifter republic of all the advantages to which she is entitled by existing treaties with us.

It violates a natural right inherent in every freeman, by preventing the citizens of these United States from expatriating themselves, when they deem it necessary, and engaging in foreign service.

It contains stipulations relative to the right of bringing armed vessels and prizes into our seaports, which are incompatible with our engagements to France, made at a time when we were under the most solemn and strict obligations to that nation, which, instead of being impaired by acts of ingratitude and perfidy, we are anxious to have continued and confirmed by good faith and friendly offices.

There is no object contained in this treaty that we conceive will warrant the secret manner in which the whole progress of it has been conducted, and lament that it did not receive a more open and public discussion, in which case it is presumable that the present embarrassment and agitation of the public mind might have been averted.

Your committee, deeply impressed with the weight of these objections, and with a sense of the many injuries which would result to the United States from a final ratification of the said treaty, considering that it is a prostitution of the sovereignty of the United States and a wanton sacrifice of the rights of this free nation.—DO recommend that an address be prepared, and transmitted to the president of the United States, accompanied with the objections above stated, by which it may be requested that he will not ratify the said treaty.

Resolved, That Mr. Habersham, Mr. Clay, and Mr. Noel, be a committee to prepare an address on the above subject to the president of the United States.

Mr. Habersham, from the committee, reported an address, which was agreed to.

Ordered, That two copies of the address be engrossed, and that Mr. chairman do sign the same in behalf of the citizens present, and cause the report, address, and proceedings, to be transmitted, both by land and water, to the president of the United States, with all possible expedition.

Resolved, That the thanks of this meeting be given to Messrs. Brown, Bloodworth, Butler, Burr, Jackson, Langdon, Martin, Mason, Robinson, and Tazewell, who were a minority in the senate in opposition to the said treaty, for their virtue, integrity, and patriotism.

Resolved, That the thanks of this meeting be given to the chairman, and gentlemen composing the committee, for their attention to, and faithful discharge of, the trust to which they were appointed.

Ordered, That the proceedings of this meeting be published and attested by the secretary, and that the chairman do cause the same to be distributed in the several counties of this state.

I certify that the foregoing is a true copy taken from the original.

PETER S. LAFFITTE, Sec'ry.



## R E S O L U T I O N S

*Of the Inhabitants of Bordenton, Crosswicks, Blackhorse, and Reckless Town, and their several Vicinities, adopted August 8th, 1795.*

**T**HE treaty with Great Britain, negotiated by Lord Grenville and Mr. Jay, being duly read and considered, the following resolutions were proposed, and *unanimously* adopted, viz.

1st. Resolved, That the very preamble of the treaty fills us with mortification and astonishment, in as much as it abandons the high claims, the positive losses, and that honorable repara-

tion demanded throughout the union, and so explicitly declared by our chief magistrate, as necessary to be insisted upon, and which were held up to the people as justly to be expected, on his appointment of an envoy extraordinary, to Great Britain, for that purpose, only.

The memorial of the citizens of Philadelphia, dated the 25th ultimo and signed by William Shippen, junior, as their chairman, having been, on motion, read,

2d. Resolved, That the said memorial expresses our sense of the separate articles, and general tendency of the said treaty, as they respect our commerce, our common interest, our honor, and our safety.

3d. Resolved, That we do not comprehend the policy which leads us from the love and protection of a sincere, powerful, and friendly nation, into the arms of an old, inveterate, unalterable foe; from whom we have received nothing but injury, duplicity, and insult.

4th. Resolved, That so long as the government of Great Britain continues hostile to the rights of man, to the independence of other nations, and to those very principles on which we have formed our respective governments, we conceive their open enmity much less dangerous than their pretended friendship, and that their secret influence is more to be dreaded than their declining power.

5th. Resolved, That it be recommended to our fellow citizens to consider of some speedy remedy, by which that part of the federal constitution which empowers twenty senators, under a less virtuous executive, to sacrifice the interest, honor, and the existence of these states, either through pride, ignorance, vanity, or corruption—to consider whether it be not necessary for our common security, against future attempts to lay us prostrate at the feet of our natural enemy, that two-thirds of the house of representatives, as well as the senate, shall consent to the forming or ratifying treaties with foreign nations; and whether the constitution ought not to open the doors of the senate, except on some extraordinary occasions, or during a war.

6th. Resolved, That Stephen Thompson Mason is entitled to the thanks of this meeting, and of every good citizen, and real friend to the constitution of the United States, for his patriotic and independent conduct in rending the veil of senatorial secrecy, and thereby disclosing to the world the treaty, lately concluded by John Jay and the minister of the king of Great Britain, touching the dearest rights, and most essential interests of a free people.

On motion,

Resolved, That the proceedings of the present meeting be immediately transmitted, by the chairman, to the president of the United States.

By order of the meeting,

JOSEPH KIRKBRIDE, Chairman.

State of New Jersey, Bordentown, August 10, 1795.

Attest,

NATHAN ROCKHILL, Secretary.



FROM THE (BOSTON) CHRONICLE.

## An Essay on Jacobinical Thinkers.

*Messrs. Adams & Larkin,*

**I** SAY the treaty is a good one, Messrs. Printers, and all those are fools and Jacobins that do not say so. I say so, not because I think so, for I do not think about it, and there is none but your Jacobins who think any thing respecting it. I say they are all Jacobins that presume to think any thing about this sublime instrument. For what did we choose the senate for, and send them to Philadelphia, but to think for us. To save the trouble of thinking upon such things, we chose them, and gave them the exclusive right of thinking upon them; and did they not accept that trust, whereby it became a bargain, which the people have not now a right to violate? I say it was a bargain, a sacred contract, that they should think for the people, and that the people should think all their thinkings right and proper, and sound and just. He, therefore, that dares to think on those matters, which we have given the senate the sole, exclusive right to think on, is an Antifederalist and a Jacobin; and I am surprised that any good Federalist should think otherwise. Is not this what that trumpet-tongued asserter of the people's rights, Mr. Hamilton, has unweariedly been preaching up? Has he not proved it again and again, as clear as the sun in the late

hot weather? I am amazed then the people should be prying and searching and peeping into things they have no business with. This very thing, Messrs. Printers, has been the curse of all governments, and I fear it will prove the bane of ours. This occasioned continual tumults in old Rome; the Roman senate could, and doubtless would, have governed the people well enough; but the people would always be questioning and proposing their whys and wherefores, which kept the senate from governing the state as they would. Just so it was in France; and if this cursed inquisitive temper had never infected the good people of America, we might have avoided all the horrors of our late bloody and cruel war. It was this restless temper, that drove the king of England to pour his battalions into our country, and spread desolation through the land; all the evils of an eight years war, were brought upon us by the same inquisitive and meddling disposition, which for some time has been, and in spite of Mr. Hamilton's admonitions, still continues to raise its gorgon head among us. It is strange the people will not learn wisdom by such bitter experience, but even while smarting under the English lash, of the *last* war, will still indulge the same disposition which then brought it upon them. They will still listen to the syren voice of those very Jacobins, who kindled the flames of the last war, as if they had already forgotten the miseries it had involved us in. "Let the people" then remember, that it is their sacred right to submit and obey; and that all those who would persuade them, that they have a right to think and speak on the sublime, mysterious, and to them incomprehensible, affairs of government, are factious Democrats and outrageous Jacobins.

Let us then with one voice say, we will not think, but pay passive obedience to those twenty senators who are paid, and well paid, for thinking for us.

It is a troublesome business to be always thinking upon our rights and liberties; let then Mr. Pitt, and Mr. Grenville, and Mr. Jay, think and do for the United States; and I think, by putting the burden of thinking on them, we make a good bargain; and upon those principles I am in favor of the treaty.

PASSIVE OBEDIENCE and NON-RESISTANCE.

August, 1795.



## Remarks on the II<sup>d</sup> Article of Mr. Jay's Treaty.

**B**Y the 2<sup>d</sup> article of Mr. Jay's treaty, the settlers and traders within the precincts or jurisdiction of the posts, now held by the British within the boundary lines of the United States, may remove, with all their effects; they may sell their lands, houses, or effects, or retain the property thereof, at their discretion. Such of them as shall continue to reside within those boundary lines, may remain British subjects if they choose, or become citizens of the United States—in the latter case they are bound to take the oath of allegiance.

The enemies of the treaty have endeavored to excite an alarm, under the pretence, that as the limits of the precincts or jurisdiction of those posts are not defined, the same may reach to vast extents of country, throughout which are or may be planted, even *colonies* of people devoted to the interest of Great Britain. But nothing can be more unfounded.

The posts withheld, contrary to the treaty of peace, are two on Lake Champlain, in the state of Vermont; one perhaps at Oswegatchie; and those of Oswego, Niagara, Detroit, and Michilimackinac.

All these posts are *military stations*, either without any British settlers about them, or with but a few families, except the post of Detroit. Detroit was originally settled by the French. The attention of the inhabitants was devoted to the Indian trade; and consequently they cultivated very little land. By the peace of 1763, Detroit, with all Canada, was ceded to Great Britain. Since that time a few American, English, Scotch, and Irish settlers and traders, have joined the old French inhabitants: but Detroit still remains an inconsiderable village. The settlers within its jurisdiction are chiefly planted along the border of the river: but their settlements are of such small extent, and so little land has been cultivated, that they have not been able to furnish a surplus of provisions sufficient to feed its small garrison of two or three hundred men. For the consumption of these few troops, flour has been sent from the United States and Lower Canada, and pork from Ireland.

What, then, can be the "jurisdiction" of this post? Common sense would suppose it of very small extent; that it was co-extensive with the settlers; and, in the utmost latitude, comprehended no more of the land at and about Detroit, than belonged to them at the signature of the treaty. The rest of the

country belongs to the Indians; who, though hitherto under the *influence*, can in no sense be said to be within the *jurisdiction* of Detroit.

To form a just idea of the possible extent of the landed property of these people; it will be necessary to recur to the treaty of peace between us and Great Britain. By that treaty, Detroit became a part of the United States; and had we then gained possession of it, its inhabitants would doubtless have been considered as citizens. Or if any preferred remaining British subjects, they must have been debarred all the privileges of citizenship. But whether citizens or British subjects, the treaty of peace secured to them all their landed and other property; and Mr. Jay's treaty does no more. Will it be said, that since the treaty of peace they may have purchased immense tracts of land of the Indians; and that these also will be held under Mr. Jay's treaty? The idea is perfectly groundless.

By the 1<sup>st</sup> article of the treaty of peace, Great Britain cedes and relinquishes to the United States, "all claim to the government, *propriety* and *territorial* rights of the same, and every part thereof," consequently, the lands of the British subjects within the precincts or jurisdiction of Detroit, and any other British posts within the territory of the United States, can be of no greater extent *now*, than they were at the treaty of peace. If the king of Great Britain, or any of his governors or officers, have since made grants of lands within the boundaries of the United States (a thing not probable) such grants are mere nullities. The lands so attempted to be granted, being by that treaty the absolute property of the United States, the British subjects could not afterwards acquire any property in them; and consequently they cannot hold them by Mr. Jay's treaty.

One word concerning the inhabitants of Detroit. They are chiefly *French*, with whom it is to be presumed we shall find no difficulty in *fraternizing*; and of the others, whether originally Americans or English, Scotch or Irish, many, and probably the majority, are already well disposed towards the United States, and eager to enjoy all the advantages of our free government and citizenship. The residue can be but a small remnant; some of them may perhaps cross over to the British side of the line; and others remain for the purposes of trade at Detroit. These cannot possibly excite uneasiness, any more than the British subjects, whom, for the like purpose, we freely admit into all our seaports.

A FREEHOLDER.

Philadelphia, August 19, 1795.

T H E

American Remembrancer ;

O R,

AN IMPARTIAL COLLECTION

O F

ESSAYS, RESOLVES,

SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.

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*P H I L A D E L P H I A :*

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—SEPTEMBER 4, 1795.—

# C O N T E N T S.

	Page
1. <i>CATO</i> , No. III. - - -	147
2. ————No. IV. - - -	152
3. ————No. V. - - -	156
4. ————No. VI. - - -	162
5. ————No. VII. - - -	169
6. <i>Camillus</i> , No. IX. - - -	174
7. ————No. X. - - -	181
8. ————No. XI. - - -	191
9. <i>Resolutions of the Inhabitants of Christ Church Parish, South Carolina, July 24th, 1795</i>	200
10. <i>Baltimore Address to the President of the United States</i> - - -	Ibid
11. <i>Resolutions, Petition and Remonstrance of the Inhabitants of Morris County, New Jersey, August 15th, 1795</i> - - -	203
12. <i>Remarks on the VIIIth Article of Mr. Jay's Treaty</i> - - -	206
13. <i>True Statement of the Proceedings at Trenton, August 13th, 1795</i> - - -	207
14. <i>Resolutions of the Inhabitants of Powhatan, Virginia, July 21st, 1795</i> - - -	212
15. <i>Protest of Captain Osborne, at Jeremie, July 14th, 1795</i> - - -	213
16. <i>Letter from the British Consul at Rhode Island to Governor Fenner</i> - - -	215
17. <i>Letter from the Commander of the British Ship Africa to the British Consul at Rhode Island</i>	Ibid

## Observations on Mr. Jay's Treaty.

[CONTINUED FROM PAGE 122.]

### No. III.

**H**A VING touched upon the demand, which, under the treaty, we are entitled to make for the loss of property carried off, I have since examined official documents, to wit, the letter of the commander in chief, and the report of our commissioners, from which it may be fairly estimated, at about one million of dollars. As this was the first infraction of the treaty, and made without the slightest pretence, there can be no doubt of the justice of our demand, as well for interest as principal, which would raise the aggregate amount to about one million seven hundred thousand dollars. Is it not very extraordinary that Mr. Jay should neglect an object of so much moment, while he was so sedulous in loading the United States with the private debts of British merchants? If (which there is the best founded reason to deny) there is really any thing due on that score, surely no better fund can be conceived for its discharge than this well-authenticated claim upon the British government. What makes this omission the more extraordinary, is, that the president, while commander in chief, congress in the year 1783, and at various periods since, and Mr. Jefferson very lately, have uniformly treated this article as very important, insisted upon its fulfilment, and procured such authentic documents of its amount, as to leave Britain without the smallest apology for its inexecution.

The next object of Mr. Jay's negotiation was to obtain satisfaction for the insults our national flag had sustained, and redress for the injuries done our trade in violation of the laws of nations. These may be divided into two classes, 1. Acts authorized and ordered by the court of St. James's. 2. Acts done by individuals *under colour*, but in abuse, of those orders. The first class must, necessarily, govern the decisions of their maritime courts, which, though professing to be ruled by the laws of nations, always take the direction of the sovereign as the expositor of those laws. Thus, when Mr. Pitt seized, in time of profound peace, all French vessels, and thereby outraged every principle of natural law, the British courts of admiralty found no difficulty in condemning them. When, in the same war, to prevent

the Dutch from availing themselves of their neutrality, to acquire the carrying trade, he made prize of every ship loaded with French produce, the courts of admiralty condemned them without hesitation, and justified their conduct by the orders they had received. Indeed it would be a solecism to say, that the king can frame instructions, and give orders for making prizes, and that his courts have power to over-rule those orders, and punish the subject that obeys them; since it must often happen, that the interest of the state may justify a breach of the code of nations, without its being proper to communicate to the ordinary courts the principles upon which this justification is formed. Accordingly, we find it the constant practice when a new edict is issued, to send it to the maritime courts as the rule for their conduct in determining of prize or no prize. And the courts of appeal in prize cases consist of commissioners of appeal, of whom a majority must be privy counsellors (22 Geo. II. chap. 3.) the reason for which is, that their decisions, as judges, may conform to the instructions they give as privy counsellors. The second class of injuries, arising from abuses committed by individuals under colour of such orders and instructions, are always corrected (not, however, without a great expense and delay) by the inferior courts of vice-admiralty in the first instance, or by appeal, if their decisions are erroneous. This distinction will be important in discussing the 7th article of the treaty. Let us now examine the causes of complaint on the subject of the detention or capture of vessels and cargoes, as arising under both these.

1st. Orders were issued for detaining our vessels going to France, loaded with provisions, even before the war broke out; and we were compelled to part with our property at such prices as the British market afforded, though a better one was open to us in France.

2d. They issued orders to take all our vessels going to France with provisions; and shortly after, in the most perfidious manner, without any notice, without even publishing their intention in England, lest we should learn it from thence, instructed their armed ships in the West Indies, to make prizes of all neutral vessels sailing, either to or from the French islands. These several cruel and unprovoked attacks upon our commerce, cannot be palliated by any law of nations, however obsolete, and were attended with the following serious evils to this country, for which we are entitled to a *national* compensation.

1. It dishonored our flag, which is a serious evil to us as a commercial nation; since it is the firmness we manifest in maintaining the respect due to that, which must make the basis

of our carrying trade; for who will trust their merchandize to ships which may be violated with impunity?—Who employ vessels from which his property may be ravaged, without the most distant hope, that the sovereign under whose protection he has placed it, will vindicate his rights?

2. The loss of that property which the country would have acquired, had not many been deterred by these measures from entering into this branch of commerce.—As this cannot be stated as the loss of an individual, it must be considered as a general loss by which the whole community is affected, and for which, therefore, the whole community were entitled to a recompense in damages.

3. The actual loss of property, first by the detention and limitation of the price of the articles taken, and the still greater loss by condemnation of ships and cargoes, for which nothing was paid.

4. The individual loss of seamen who were discharged from their ships; compelled by force, or reduced by absolute want, to enter into the British service in the West Indies, where great numbers of them died of the diseases of the climate, and the ill-usage of their oppressors. I have already observed that the treaty makes no kind of provision for these worthy and unhappy citizens; or for the families of those that have perished; disgraceful and unfeeling omission! Besides this loss, for which the individual was entitled to a compensation, the nation might demand exemplary damages for the indignities and actual loss of strength in the death or removal of many valuable citizens, and the loss of many vessels, at a time, when by their employment, so great a profit would have resulted to the community.

The above enumerated evils were the effect of the express act, and emanated from the special authority, of the British government. In addition to this, we suffered losses under the *unauthorized acts* of individuals, who, in some instances, plundered and procured the condemnation of vessels that were not liable to capture by the special instructions to which I have alluded. But the number of these were comparatively small; and for these courts of adjudication were always open; and yet, by a most extraordinary fatality, Mr. Jay overlooks all these flagrant injuries committed by the British king against the United States *as a nation*, and for which they are without remedy, but by a national compensation, and neither asks nor procures any redress.

The nature of Mr. Jay's application is explained in his courtly note to Lord Grenville. This contains no complaint of any of the instructions I have alluded to, or any other, expressive of the injury that one *nation* had done to the other, but merely in the

case of *individuals*. His words are, that great and excessive injuries have, under *colour of his majesty's commission* and authority, been done to a numerous class of American merchants, (not to the American nation) the United States can, for reparation, have recourse "*only to the justice, authority, and interposition of his majesty.*" Through the whole of this note, he speaks of nothing further than individual compensation for individual injury, leaving the two nations entirely out of sight as nations; and indeed if he had intended any thing more, if he had had the instructions I have mentioned, in view, it would have been impossible for him to have made use of so many panegyrics on the *justice and humanity* of his Britannic majesty. In speaking of our seamen (which he doth with such pathos as to lead us to hope for some spirited demand in their favor) he contents himself with only requesting, that they may be liberated, and unmolested in *future*, without a word of compensation for the past.—The reply of Lord Grenville is in the same stile—Not a word of the instructions, not a word of apology to the American nation, not a word of compensation, except for the *irregularities* committed by individuals, &c. The British *nation* is supposed in all these proceedings, to be immaculate. Now let us examine the article, and see how completely Mr. Jay forgot that he was envoy for a great nation, and sunk into the suppliant solicitor of some merchants, whose cause he has managed so ill, as to leave them in a much worse state than he found them, since he took from them the protection of their own government, to leave them the chicanery of courts in which the very instructions that occasioned their losses, must be admitted as laws sufficiently valid to justify them.

The 7th article exactly pursues the principles established in the note, to wit, that the United States are entitled to no recompense; that the government of Great Britain has done us no injury, and that "*divers merchants and others*" only have to complain of the irregularity of some captures and condemnations, which it supposes the courts of admiralty are, for the most part, competent to decide upon. But that if it should happen, that there are any losses for which adequate compensation cannot be obtained, provided that the party claiming has been guilty of no neglect or delay, such compensation shall be ascertained by commissioners, and his Britannic majesty engages to pay them. As this article says nothing about opening the courts, it must have been understood by both parties, that they were necessarily open, independent of the treaty; so that all the advantage, if any, that may result from appeals, were rights that individuals in every civilized nation may claim, and which ma-



ny had exercised before Mr. Jay's mission. In this respect, then, nothing was effected by his negotiation, unless it was, that the time for bringing appeals is said to have been enlarged; but of this, the treaty says nothing; this too, must therefore, depend upon the will of the king of Great Britain, or on the rules his courts chuse to establish. All that Mr. Jay has then done in this important business, that involved the honor of his country, the great interests of its commerce, the rights and liberties of its citizens, and the property of individuals, many of whom have been ruined by the loss of their capital, is to obtain a *promise* of compensation in such cases as are so singularly circumstanced as not to be within the reach of legal redress. When we come to view this article, stripped of its unnecessary verbiage, it will appear to mock with delusive hopes, the men that it affects to relieve. Let us enquire what is to be the business of the commissioners, and of what nature and kind the causes that are to come before them.

They are not to relieve against captures under the order of April, November, or January. 1st. Because neither of these are complained of, and the preamble of the article expressly relates to the injuries "divers merchants and others" complain of having sustained by *irregular* captures or condemnations of their vessels and other property under colour of *authority and commission*, &c. Now it would be absurd to suppose, that this can have any reference to what is done by the *express* order of the sovereign, or to any act but such as is an abuse of that order and authority; but these abuses make but a small part of our cause of complaint (which goes to the order itself) and are besides necessarily relievable in a court of appeals, without the intervention of a minister extraordinary; and were so before the treaty. The great cause of complaint, *the instructions*, which are the laws of the court of admiralty, not being complained of, all condemnations fairly made under them, must be confirmed by the treaty. What then are the commissioners to do? They are not to revise the decisions of the courts; they are not to interfere where the injured party has neglected to appeal. The decrees of the courts are to be absolute with respect to them; nor can they, as far as their powers may be collected from the treaty, bind the crown of Great Britain in any case whatever, in which the party claiming the benefit of their decision does not first show that he has commenced and carried through his suit in the British court of appeals, that their decree was in his favor (for without doubt their judgment is meant to be conclusive, or else the commissioners would only be a second court of appeals, which would be a solecism not

even hinted at in the treaty or preceding negotiations) that the captor is insolvent; that his securities have been prosecuted to judgment, and that they are also insolvent, in this case; and this appears to me the only possible case in which the commissioners may bind the crown to pay what has been recovered in its courts.

Now I would ask any man who reflects a moment on the delays of the British courts, and on the maze of law, which must be had, before a single cause can be brought before the commissioners, whether the whole article is not a mockery of justice, whether any cause can be ready for this tribunal in two years, though by the limitation expressed, the claims must be entered within eighteen months, and whether it would not be much cheaper for the United States to pay the few persons that may possibly be relieved by this mode, the amount of their losses, than load themselves with the expense of so useless a commission?

C A T O.

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No. IV.

**H**AVING stated, in the preceding numbers, the leading national points, which were supposed to make the object of Mr. Jay's negotiation; having shown that the treaty leaves the greatest part of them untouched, and seals a release of indisputed rights, in order to procure, in return, a *promise* for the surrender of our own territory at a distant day, and a nugatory engagement for compensation to a few sufferers, whose cases may be peculiarly situated; while the rights of the nation, the great mass of the merchants, and the whole body of seamen are shamefully abandoned; I proceed now to consider the treaty in a commercial point of view, in which I am sorry to say, we shall seek in vain for some advantages to compensate these disgraces; some proof to testify the assertion of our envoy, that "the United States confide in his majesty's justice and humanity." The same gloomy features distinguish every part of it, whether it is seen in a commercial or economical view: our merchants, our seamen, our manufacturers, our citizens, our allies, our government, and our honor, all are treated with equal contempt. But one interest seems to have been attended to, throughout the whole negotiation—the *interest of the British nation*; such fetters are put upon our own, that our envoy certainly intended that our ministers should hereafter say, with truth, what he had only intended as a proof of his policy

address, "that the United States can, for reparation, have recourse, *only*, to the justice, authority, and interposition of his majesty." Little means, alas! will be left them for the exercise of their own authority, if this treaty should ever become the law of the land.

In considering the commercial articles, I shall begin with the Indian trade, after having submitted a few rules, to the force of which every well-informed man will readily subscribe.

1st. That, all things else being equal, that trader who has the greatest capital, most knowledge of trade, an established set of customers, and the most extensive acquaintance with the dealers in the commodities he buys and sells, will be able to maintain himself against any rival merchant that does not enjoy these advantages.

2d. That if, in addition to this, he has advantages in the transportation of his goods—in the sale of the commodities he purchases—and in the establishment of factories—he must ruin all competitors. By the treaty of peace, our boundaries are fixed, and the British are to evacuate our territory without any stipulation, whatever, in favor of British merchants or traders; by this treaty, therefore, so much of the fur and peltry trade, at least as lay within our own territory, was necessarily and exclusively ours; as we possessed all the posts at which the trade had been carried on for a century past, and most of the portages. As our communication from the sea was much easier than by the St. Lawrence, we could furnish English goods cheaper, and, of course, would have continued the Indian trade in its usual channel, even from the British sides of the lakes, nor could they, by any means, have prevented it, without giving such disgust to the Indians as would have made them dangerous neighbours.

Lord Grenville's treaty with Mr. Jay stipulates, that the British traders may continue to live at our posts; to hold the property they possess; to trade in every part of our territory as freely as our own citizens; and to navigate our rivers *from the sea* as high as our own citizens may, that is, to the highest port of entry, and from thence to navigate our inland waters. It must follow, then, that, under these circumstances, they stand exactly upon the same footing with our own citizens. It will also be admitted, that having been for twelve years in the exclusive possession of the Indian trade—having, in general, much larger capitals—having an extensive acquaintance among the Indian nations, and with the Canadians, who are the general carriers in that country, American traders will not be able to maintain a competition with them, even if they had no other

advantages than those I have enumerated. But this, unhappily, is far from being the case; first, they have, of course, a right to settle factories in every part of their own territory; their factors being always upon the spot, and cultivating an acquaintance with the natives, will certainly be able to command the trade of their country, and thus render absolutely useless the stipulation which admits American traders *to travel into* that territory; for it is observable, that the navigation act, 12 Charles II. chap. 18, which is preserved in full force, by the 14th article of the treaty, prevents our establishing any factory or trading house, or residing as merchant-factors within the British territories, *out of Europe*; while the treaty permits the British to *reside* in any part of the United States; to hire and possess houses and ware-houses for the purpose of commerce, &c. so that while, by this means, they have an exclusive trade in their own territory, notwithstanding the apparent grant of a right to us, they have all the advantages our citizens enjoy in ours, with those they have acquired from large capitals, knowledge of the trade, &c. Our trader may, indeed, travel, like a pedlar, through their country with his shop upon his back; but cannot have any fixed residence at which to open a store. Were not Mr. Jay a chief justice, I should be tempted to believe that he did not know of the provision of the act of 12th Charles II. chap. 18, which he has kept in full force by the 14th article of the treaty.

This exclusive trade in their own country, by means of the factories they may establish, gives them another considerable advantage; it is well known to merchants, that the more extensive any branch of commerce is, the less liable to interruptions, the more profitable it must be, and of course, the better it enables the trader to undersell his competitors. If then our merchants can only trade in our territories, and there with no advantage over the British—and if the British merchant can trade with equal advantage in our territory, and superior in the British territory—the last can employ a greater capital in his commerce; and as the Indian trade is liable to frequent interruptions by wars and bad seasons, which may prevail in our country, while that of the British is unmolested, the whole capital of our trader remains inactive, while a considerable part of that of the British trader is employed. This again must render the competition very unequal.

A writer who has shown much more anxiety to maintain, than candor in defence of, the treaty, has overlooked all these circumstances which will effectually prevent our traders from contending with the British, and which, in fact, amount to an

absolute surrender of this important branch of commerce, and consoles us with the hope of being able to find a market for East India goods, through the intervention of this treaty. I must confess, that I have yet to learn, that any East India articles consumed by the Indians, on the north of the lakes, will exceed one hundred dollars a year; perhaps the writer means, that the inhabitants of Canada will receive them through this channel; if we should even admit this, which, however, we shall be able to show is highly improbable, yet it would appear a very insignificant advantage, when we reflect that the whole number of inhabitants in Canada, and Labrador, as appears by a census, taken by General Haldiman, amounted, in 1784, including Upper Canada, to only 123,082 souls: but few of these are in the habit of drinking any tea, and all are too poor to consume any but the coarsest articles; so that the whole consumption of Canada, in India goods, if we had a monopoly of that trade, would fall short of what is consumed in the little state of New Jersey; and we should certainly make a miserable exchange, if for this we sacrifice a branch of commerce of such immense importance, as the Indian trade.

But what can be more absurd than to suppose that articles which come duty-free from Britain (a drawback being allowed on exportation) and are carried into the heart of the settled parts of Canada in the same vessels that bring them from Europe, cannot be sold cheaper than the same articles, subject to a heavy duty, and carried an immense distance by land, and an expensive inland navigation? this indeed may not apply to the upper posts; but who are the consumers of East India articles in those cold, poor, and barren regions?

In short, the more any one considers this article, the more fully he will be convinced, that it contains a complete and absolute surrender of the fur trade, the greater part of which we might have exclusively possessed under the treaty of peace, had not Lord Grenville prevailed on Mr. Jay, to introduce a rival who will always be too powerful for us. And what renders this circumstance the more peculiarly oppressive, is, that this article is to be permanent; Lord Grenville was too sensible of its importance, to permit any time or circumstances to unloose these galling fetters.

This article is not less exceptionable in a political, than in a commercial, view. We know from sad experience, the cost and danger of Indian wars; we know, too, from the same experience, that they can be, and have been, fomented by Britain, whenever her interest or her malevolence prompted her to distress us. By permitting the British traders to remain amongst

the Indians, and to extend themselves to every village, we add to their influence; and by the terms of the 26th article, are prohibited from expelling them, *even in case of war with Britain herself*, unless their conduct should render them suspected, and not even then in less than twelve months from the publication of the order. What but the blindest infatuation could induce our minister to stipulate that a secret, nay, even an open enemy should remain without restraint among savages, whom the slightest circumstance stimulates to war? Did we not know what we formerly should suffer from a few Canadian priests and traders residing among the Indians, and how many endeavours were used by the government, to get the Six Nations to expel them? It will be said, this article is reciprocal, and that if their agents remain within our lines, ours remain also within theirs: this, however, is not the fact; for if at any time a war should break out, our traders (if we should have any, which I much doubt) will, for their own safety, retire from places so remote as the British territories; besides that, not having any right, as I have before shown, to reside within the British territories, *out of Europe*, which is expressly prohibited by the navigation act, and no such right being given by the treaty—it must follow, that no American merchant or trader, not settled in Europe, can have the least benefit by this provision; while hundreds of British emissaries may, under the pretence of trade, maintain the most dangerous stations in the heart of our country. What, sir! Is it not sufficient to have abandoned our seamen without having a compensation for their injuries? Must the unhappy farmer, when the care and attention due to a growing family compels him to relinquish the charms of society, and retire to labour and solitude in distant forests, must his pains, too, be aggravated by your treaty? Must artful emissaries, even of an open enemy, be permitted to stimulate savages, too ready of themselves, to bloody deeds? Must every land as well as every sea, witness the apathy with which the liberty and lives of our best and bravest citizens are abandoned?

C A T O.

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 No. V.

I AM at some loss to understand what is intended by the following words in the 3d article—"And in like manner, all goods and merchandize, whose importation *into the United States* shall not be wholly prohibited; may freely, for the pur-

poses of commerce, be carried *into the same, in manner aforesaid, by his majesty's subjects*; and the same shall be subject to no higher, or other duties, than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said states." The *manner aforesaid*, alludes to the former part of the article, which gives the British a right to navigate our rivers from the sea to the highest ports of entry for foreigners, and from thence by land into the Indian country. The only natural construction of these words, is, that the British shall have a right to import into the United States upon the same terms as Americans; and yet I can hardly conceive that Mr. Jay could intend, in the face of a law of the United States (Act making further provision for the payment of the debts of the United States, chap. 39. sec. 2.) which imposes an additional duty of ten per cent. on articles imported in vessels not of the United States; I say, I should hardly conceive that he should presume to enter into such stipulation directly in the face of a law of the United States, and that, too, in favor of a nation whose navigation act is at war with our commerce; did it not breathe the same spirit with the 12th, 14th, and 15th articles, all of which strike directly at the navigation of these states. Nor do I know any other construction that can possibly be put on the words, which I have stated at large, that every reader may judge for himself. It is, however, possible, that Mr. Jay may have *intended* (for never was a public instrument drawn with less precision than the one before us) that this provision should only extend to goods brought in for the purposes of the Indian trade; yet how the words can be made to bear this construction, I am at a loss to conceive. But should even this be admitted to be the true meaning, it will again prove the extreme solicitude of the framers of the treaty, to secure to the British the whole benefit of the Indian trade; without this article, goods might be purchased of our merchants, for the purpose of this commerce, which would, on account of the ten per cent. difference, have been imported in American vessels; but this slight advantage, it seems, was deemed too much for the sacrifice of the whole profits of the Indian trade. It is therefore stipulated, that the British shall navigate our rivers to the highest port of entry for foreign vessels, and that upon this construction they shall pay *no foreign duty* for the articles they import; so that all that the British merchants will have to do, will be to establish factories at the ports of entry, and under pretence of the Indian trade (if it should be thought that the words should be confined to that) import in British bottoms, upon the same terms as we do

in our own ships: and as by the 15th article, our vessels are to pay a duty, which is to countervail the duty paid here by the British, that is, ten per cent. every article imported this way, as Indian goods, will yield ten per cent. more profit to the British merchant, taking the outward and homeward voyage into consideration, than it will to the American, and the revenue law be eluded. But supposing it possible to prevent these goods so imported into New York, for instance, and there put on board river vessels, and from thence carried by land and by inland navigation for a considerable distance, from being sold before they get into the western territory; yet even then this provision must operate as a bounty on British vessels, in preference to all other foreigners, and as an encouragement of ten per cent. in favor of the British merchant, who carries on the Indian trade, to the prejudice of our own commerce and our own revenue. Thus, to make myself more fully understood, a British merchant sends in his *own* ship, articles intended for the Indian trade, or indeed any other, under that pretence; he has a right to enter them without paying any other duty than the American does; and his return cargo pays no duties in England. The American merchant ships in his own vessel the same articles, on the same terms; but by the general operation of the 15th article, Britain has a right to lay on the return cargo a duty of ten per cent. The words of the article are, “but the British government reserves to herself the right of imposing on American vessels, entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America, and also such duty as may be adequate to countervail the difference of *duty now* payable on the importation of European and Asiatic goods, when imported into the United States in British or American vessels.” If, then, against all obstacles, the American merchant should carry on the Indian trade, will he not, by this circumstance, be compelled to import and export in British vessels? By the 12th article, British vessels may import into the United States from their islands, without paying greater duties than the Americans; this again is in direct opposition to a law of the United States above cited.

By the same article, our boats of 70 tons, which *his majesty consents* (for it seems this article is a gift and bounty of his majesty, and not, like the rest, matter of agreement) are also to pay an equal tonnage duty in the islands with that the British pay here. Now I would ask, if it is possible to devise a more effectual way to put the whole West India trade into hands of the British?



1st. They pay only American duties. 2d. As the American must pay in the islands, what tonnage the British pay here, the tonnage would be exactly even; but as the American vessel also pays a tonnage duty in our own ports of 6 cents, which the British do not pay in their own islands, it must follow, that the British carrying on the West India trade, will pay 6 cents less tonnage upon the whole out and return voyage, than the American; and as four voyages may be made in a year, the American will pay in the course of the year, 24 cents per ton more than the British ship, though the ship is unlimited as to size, which we know to be an important circumstance in the cheapness of navigation; that our minister should not be content to put the British upon a par with the American, in the face of existing laws, and laws too that cannot be altered, because they are pledged for the discharge of the funded debt, seems so monstrous a misdemeanor, that it will hardly be believed even by those who have read the treaty over with attention.

I therefore transcribe the very words; “and the said American vessels shall be subject there to no *higher tonnage, duties or charges, than shall be payable by British vessels in the ports of the United States.*” Now British vessels pay a tonnage in our ports of 50 cents, which, according to the express words of the treaty, we must pay in their ports, in addition to which, by our own laws, our vessels are subject to a tonnage of six cents; so that when the British pays fifty the American will pay fifty-six cents per ton upon his outward and homeward voyage, that is, fifty under the British law, and six under our own. If, in addition to this, it is considered that the British are empowered to settle as factors or merchants in all our ports, and not even to be molested in case of a war, and on the other hand it is expressly prohibited by the British navigation act, for Americans to settle or establish a trading house—if it is also considered, that any British ship having carried out her cargo, may be governed by circumstances, and go where she chooses for a better market, while the American must necessarily return to our ports—it will follow, that the whole trade of the British West Indies must be carried on in British bottoms, and our merchants either be precluded from this trade, or consent to act the humble part of factors to British merchants; the vessels formerly employed in this trade, must necessarily rot at our wharves, and our seamen be turned over to Great Britain, to support her commerce, and, whenever she thinks proper, to plunder and distress our own. It may be said, that we have at present no West India trade but by permission;—

but it should be recollected, that that permission grows out of the necessities of the islands; that it always existed in some shape; that during the war their ports must be open to us, and probably for two years after, till the wants, occasioned by the war, are supplied; so that this article extends only to the very period in which we may presume with certainty upon this commerce on fair and equal terms.—Were it even otherwise, as it is now notorious that the islands cannot subsist without us, by prohibiting their ships from carrying articles that they cannot do without, it would necessarily follow, that they would be compelled to open their ports to us, upon our own terms. But at all events, we must be very considerable losers by this treaty; for supposing that trade would, independent of the treaty, have been carried on in British bottoms, we then gained at least the 10 per cent. the foreign duty on their imports, which duty would operate as a bounty upon our trade with other foreign West India islands, as well as similar articles imported from the East Indies, and thus contribute to extend our navigation and commerce in one quarter, while it restrained it in another; we should, indeed, by this means, have less of the produce of the British islands, but more of the produce of other countries; our exports to the British islands would continue as they were, because they could not do without them: our imports from them would diminish, and the foreign markets from which we supplied the deficiency of British sugars, &c. would afford an additional market for exports. But, alas! the evils of this article do not even stop at the point I have mentioned. By this treaty, we are not only to lose the benefits of the trade with the British, but also with the French islands, who now kindly open their ports to us; by the second article of our treaty with France, we mutually agree, that neither will “grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favor freely, if the concession was freely made, or on allowing the same compensation, if the concessions were conditional.” The French, then, the moment this treaty is ratified, have a right, in case they admit us to visit their islands with vessels of seventy tons, to come to our ports, free of foreign duty upon the articles they import, and may also impose a tonnage duty of 50 cents on our vessels, and of course navigate to and from our ports, six cents cheaper than our own vessels; and can we doubt, after the causes of disgust which this treaty will give them, that they will delay a moment to exchange our free trade, with their islands, into that same commerce which we meanly

accept as a *bounty* from Britain? Lord Grenville, however, conceiving that the transfer of our whole *West India* trade and navigation, was not sufficiently ruinous to our commerce, asks and obtains from our polite envoy, in return for his majesty's condescension in accepting so great a part of our trade, that we would also prohibit the exportation of melasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his majesty's islands, *or from the United States*, to any part of the world, reasonable sea-stores excepted. The few apologists that the treaty has yet found, affect to believe, that the restriction is to be confined to such of the above articles as are imported only from the British islands; but the words are express, "that the United States will prohibit and restrain the carrying *any* (not any such) melasses, &c." and the reason they will urge in defence of the only true and obvious construction, would be, that as one cask of coffee cannot be distinguished from another, if *any* was exported, that which came from their islands would be exported; and thus we would, in this circuitous route, acquire a certain proportion of the carrying trade. That this is a part of a general system for the ruin of our navigation (Britain always having dreaded us as a rival) will appear from the instructions for armed ships, of the 8th of January, 1794, which remain unrevoked, and, as far as we have yet learned, uncensured by Mr. Jay. By that their armed vessels are instructed "to bring in for *lawful adjudication* all ships with their cargoes that are laden with goods, the produce of the French West India islands, for any port of Europe." How then stands our trade as to the exportation of those important articles? 1st. We are not to ship them from the French islands. 2d. We are not to ship them from the British islands. 3d. We are not to ship them from the United States. From the East Indies we cannot ship them; because the East India cargoes being afforded for our markets, must first land here, after which, by the tenor of the treaty, we are not to re-ship them; nor can we even ship the cotton which is the product of our country; the prohibition being express, that we shall not export any. Now let us see the amount of the exports, and determine how far it is wise to lay ourselves under these humiliating restrictions.

From the 1st of October, 1791, to the 30th of September, 1792.

Cotton exported	-	138,328 lbs.
Coffee	-	2,136,742
Cocoa	-	6,000
Brown sugar	-	1,122,156
Loaf ditto	-	21,760
Melasses	-	12,340 gals.

Humiliating as this article is, when I come to consider the 14th and 15th articles, it will appear, that neither this nor the loss of the Indian trade, are the severest blows aimed by this treaty, at the commerce and navigation of the United States.

C A T O.

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No. VI.

**H**AVING had occasion to show, in considering the treaty in a mere commercial view, that it contained an express relinquishment of the Indian trade; that it placed the West Indian commerce upon so disadvantageous a footing, as to render foreign nations our carriers, not only in that trade, but in the exportation of many articles (as sugar, cotton, coffee, cocoa) that we might import from the West Indies, or raise among ourselves; I proceed now to show, that our vessels will become equally useless in the European trade, if the treaty goes into effect. By the simple operation of her navigation laws, Britain had possessed herself of almost the whole of the carrying trade between the United States and her dominions. From October 1789 to September 1790, both inclusive, the amount of our exports to Britain and her dominions were of the value of nine millions three hundred and sixty-three dollars; and our imports from thence, upwards of fifteen millions two hundred thousand dollars; making, together, upwards of twenty-four millions five hundred thousand dollars, on which commerce we paid Britain a balance of near six millions, while we gained from hence a balance of more than two millions and one half; yet this immense trade with Britain only employed 43,580 tons of American vessels, while the trade to France employed 116,410 tons, though our trade with her was less than one-fifth of our trade with Britain. The extreme injury the United States sustained by thus suffering a foreign nation to run away with their carrying trade, and, of course, cutting the sinews of their commerce and maritime strength, was urged as the best argument for the formation of the federal government; as, by that means, we should acquire the means of making restrictive laws upon the commerce of nations that oppressed ours. We accordingly find, that very early after the formation of our government, tonnage duties were imposed upon foreign vessels; and the immediate effect of them was to add new vigor to our navigation; it will appear by the present state of our tonnage,

compared with that I have given, that, under the operation of this law, we were progressing so fast to a considerable degree of rank among maritime nations, as to incur the jealousy of that ambitious and selfish people, who fancy themselves the lords of the ocean, and consider every other that attempts to navigate it, as intruders upon their rights. To this cause we must attribute, in part, the various attacks that they have, from time to time, made on our commerce; it remained, however, to give it the fatal and final blow, which should put it out of our power to carry for ourselves or others: and the honor of effecting this was reserved for our envoy extraordinary, and a majority of that body to whom the states had confided our dearest rights. I have already observed, that the 12th article, taken together with the instructions of the 8th of January (at this moment in force) effectually precludes us, not only from the carrying trade of British or French islands, even though France has generously admitted us to carry from hers on the most favorable terms, but has actually cut off the carriage of our own commodities and certain others, of foreign and domestic growth, from our own states; and that the trade of India goods is so managed also, as necessarily to fall to the share of Britain, to the exclusion of ourselves. Let us now see on what footing our European trade will stand: 1st. In time of peace, and next, when Britain shall be at war. By our tonnage and revenue laws, our ships had an advantage in the trade to Britain, of 44 cents the ton; and the discriminating duty of near 10 per cent. operated as a premium upon our own shipping; yet even this by no means countervailed the effect of the navigation law, and other restraints upon our commerce. But still under the operation of these statutes of the United States, our trade and navigation flourished, and was increasing; and as we reserved a right in our own hands, in case of new burdens, to impose further duties upon those that injured us, we had the most perfect security against any further legal attacks upon our commerce. Because, such was the nature of our commodities as to be essential to the nations with whom we dealt; while a variety of markets could furnish upon nearly equal terms, those that we wanted. To Britain we paid an annual balance of near six millions of dollars: which she must necessarily, and perhaps for ever, have lost, if, by a commercial warfare, she diverted it into any other channel. What, however, she did not dare to attempt openly by her laws, she has fully effected by her treaty.

By the 14th and 15th articles, we agree, that she shall impose upon our American vessels, a tonnage duty, *equal* to what her ships pay here; that she shall also impose a duty which shall

*countervail* the foreign duty on American vessels. At first view, this appears to be just; for why, say the apologists of the treaty, should she not impose upon your trade the restrictions you impose on hers? Does not France reserve a right to do the same? Undoubtedly; had the article stopped at this point, it would have been perfectly just; and the navigation of each nation would have then depended upon the means they respectively had of building, victualling, and sailing their ships, which is exactly the case between us and France. But unfortunately the articles referred to, while they affect to be reciprocal, leave in full force the British navigation act, and all their other restrictive laws, by this artful appendix to the 14th article, to wit: "But subject always, as to what respects this article, to the laws and statutes of the two countries respectively." Had the matter even rested here, it might again have been reciprocal (though extremely unwise on our part) since, while it left the British trade laws in force, it also left ours in equal force. But this was not the intention of the contracting parties. Words of reciprocity were very well to make a parade with; they would deceive the ignorant and superficial reader; but the greatest point was, while it preserved to Britain the navigation and commercial acts, by which they have raised their commerce at the expense of other nations, to beat down the barriers with which we fenced ours, and even to take from us the means, by any future arrangements, of preventing the ruin of our trade.

Mr. Jay, therefore, agrees, in the 14th article, that all our laws, as well as those of Britain, shall remain in force; but in the 15th article he evades the provision so far as respects *us*, and expressly stipulates, that *we* shall lay no additional charge upon Britain to countervail her navigation and other restrictive laws; but that *she* may, while she preserves them in full force, impose a tonnage and other duties to countervail those *we* had imposed, in order to enable us to bear up against them. I ask then in what this article is reciprocal? Britain had already gone as far as she dare go, in oppressing our trade, and *now* consents, if we will permit her to continue all the burdens she has imposed upon us, and at the same time agree to let her lay such others as *she thinks* equivalent for our having presumed to relieve ourselves, that she will agree with *us* that no *further* partial duties shall be imposed by either. Let us enquire into the effect of these articles upon our commerce and national character.

1st. As it is obvious, that the present flourishing state of our navigation, is, in a great measure, owing to the operation of the laws I have mentioned; it must follow, that whatever countervails the effect of those laws, must bring it back to the

state in which it was. Now, as the profits of every voyage are calculated on the outward and homeward voyage, if we pay in the British dominions exactly what they pay here, the charge upon the whole voyage is the same. If then, previous to the passing our tonnage laws, the British, by the operation of their navigation laws, had such advantage over us, in our own commerce, as to employ two hundred and thirty thousand tons of their shipping, as they did in 1789; while the whole of American shipping employed in the trade with Britain and its dominions, amounted, in the same year, to only 3,580 tons, less than one-sixth part of the whole quantity engaged in the interchange of commodities between the two nations—it must follow, that we shall again be reduced, in *consequence of the treaty*, to our former humiliating situation; our seamen must go into the service of the nation that is again to navigate for us; and our ship-builders, and the numerous trades connected with them, must starve, or seek some other employment, since our merchants will no longer have occasion for ships, and the British merchants are not permitted to *use those* we build. It is observable, too, that the tonnage duty, which Britain is to lay, is not a countervailing duty, like that on goods imported, but is to be, in the words of the article, “*equal to that which is payable by British vessels in the ports of America.*” Now foreign vessels pay 50 cents here; of course, 50 cents may be imposed on our vessels in Britain; but our own vessels also pay six cents a ton at home, so that on every voyage to the British dominions, and home again, they will pay 56 cents, while the British pay only 50; and as the voyage may be performed three times a year, the American ship will pay on the whole, 18 cents a ton annually more than the British; and it may be a question, whether we have any right to repeal the law laying the home duty, as it was imposed and enacted when the treaty was made and ratified, and as the repeal would put the British vessels in a less advantageous situation than they were in at the time the treaty was made. But the discouragement does not rest here, except so far as our trade may be confined to the city of London; for in every other port we pay an *extra* light money of 1s. 9d. sterling a ton, which is about 39 cents; so that an American vessel going to Bristol, Liverpool, &c. and returning, will pay (besides the 50 cents the British are to impose) 6 cents American tonnage, and 39 cents extra light money, that is, 45 cents more a ton than a British vessel performing the same voyage, and which in three voyages, or one year, will amount, on a vessel of 400 tons, to 540 dollars, extra charge on American vessels. Thus then we give an annual and no inconsidera-

ble bounty to British vessels, to the prejudice of our own navigation. I believe that this is the first instance in the history of nations, in which a commercial one has given greater encouragement to foreign ships than to her own. But the evil does not stop here; equalizing duties are to be imposed, what those are to be, is not ascertained by the treaty; but as the power to impose them is reserved to the British parliament, what is to prevent their exceeding their just measure? But supposing they are really inclined not to go beyond the right reserved by the treaty, what is to be the rule of that right? The duties we impose upon their commodities amount to 12 per cent. on the India, and, at the average, to about 10 per cent. on other articles. Are they to lay a duty which will amount to a mean of the relative quantities of these articles? if they are, how is it to be found, as the relative proportion between the importation of these articles is continually fluctuating? or is the counter-vailing duty to amount to as much on the whole of the articles imported from the United States, as the whole duty paid on foreign articles imported in British ships into the United States? this seems to be the true construction of the article. If so, then, as our imports from the British dominions, exceed our exports to them by more than one third, and supposing the average of the duty they pay here to be 10 per cent. the duty upon our exports, if carried to any of the British dominions, in American vessels, must amount to 15 per cent. otherwise the whole duty will not be equalized. The advantage that this will give to British ships over ours, particularly when they bring our cheap and bulky articles, or such as pay no duty, is too obvious to dwell upon. But this is not the only effect of this equalizing duty; as Britain has a right to choose the articles on which she may impose it, she has in some sort the regulation of our trade, so far as it may be carried on in American vessels; thus, suppose she should put the greatest part of this equalizing duty upon the most bulky articles, it would necessarily follow, that those articles must either rot on our hands, seek another market, or go in British ships, which would pay no duty at home. Could a more effectual way be devised to exclude us absolutely from carrying our own commodities? It may be said, that, independent of the treaty, Britain might have imposed these duties; true, and independent of the treaty, we might have met her with other duties.

2d. As the British must necessarily be the principal carriers between us and their dominions; so they will be, in a great measure, the carriers between us and foreign nations: because, while by their navigation act they absolutely forbid us to enter



their ports with any commodities not the growth and manufacture of our own country; they bring the commodities of other nations upon the same terms as those might by whom they were raised; and they can take back a return cargo to Britain, or its dominions, with greater advantage, than we can carry our own produce, by the whole difference of the tonnage, and countervailing duties, with six cents more added, if they return to London, and 45 cents if to any other port in the British dominions; and from thence again return with British commodities to the original port. It is evident, that the benefits attending such privileged ships, must give their owners great advantages over others; and as they can only be held by British subjects, who are by the terms of the treaty to be in every respect upon a footing with our own merchants, while they enjoy all those additional advantages as British subjects, it requires no great foresight to discover, that the whole trade of America must be engrossed by them. Nor does it require much more, to see that the leading objects of this treaty are, to establish the navigation and commerce of Britain upon the ruins of our own—to fill the Atlantic ports, and the western territory, with British merchants and factors—to establish a certain degree of rank for British officers, whom the humiliated American is directed, under pain of being “considered as a disturber of the peace of both nations, to treat *with the respect due to his commission* ;”—to put such fetters upon our legislature as would for ever bind them to the will of that imperious nation—to disgust our republican allies, and leave us *only to the justice and humanity of the man* who has urged our slaves to cut our throats—savages to murder our women and children—Barbarian pirates to enslave our mariners—and his own banditti to profane our churches, burn our dwellings, and rob, plunder, and massacre our citizens. If we compare this treaty with many speeches, made about the period of Mr. Jay’s appointment, with the support he has avowedly received from the British faction, with the warmth with which he engaged in the controversy between our government and the French minister—if we add the readiness that ardent or vindictive men feel, to suppose every thing right, which strengthens their party—we shall be less surpris’d at the treaty contravening the existing laws of the country, where they bore hard upon the British, or its giving them such additional encouragement as should induce them to pour in their myrmidons to support and strengthen the hands of government, against native Americans, and the friends and well-wishers to foreign and domestic republics—whom the courtiers have dared to calumniate with the names of antifederal and jacobin.

Mr. Pinckney informs us in his letter to Mr. Jefferson, that Lord Grenville, in stating the principles on which they had issued the instructions of the 8th of January, 1794, made use of these terms, "the second was one, that he [Lord Grenville] could not mention to me officially, but that he still thought it right I should be apprised of, that no misconception of their motives might be entertained; that he was aware of the delicacy of speaking to a foreign minister, concerning the internal state of his country; neither could he expect an answer from me on the subject. But that the second reason was, to take away every pretext from evil-disposed persons among us [the citizens of the United States] who, *according to the intelligence he had received*, were endeavouring to irritate our people *against Great Britain, as well as to oppose the measures of our own government*, and in short, to reduce us to the present situation of France." It is evident from this communication, that Lord Grenville supposed that all those persons in America, who felt for the honor of their country—who were irritated at the piracies of the British, and the insults and injuries we had suffered—which, I believe, included every native American not holding an office, a seat in Congress, or money in the funds, were *the opposers of our own government*.

As the instructions alluded to, directed the taking our vessels, going from the French West Indies to any port in Europe, Lord Grenville must have conceived, that the way to strengthen the hands of our government, was to destroy our commerce—imprison our seamen in unhealthy climates, and lessen our connection with France; the whole was evidently thrown out to Mr. Pinckney, to induce him to enter into conversation with him on the subject of such a convention between the two governments, as should engage America in a war with France, permit Britain to plunder our trade, and in return lend her aid for the support of our government.—The whole speaks this plain language, "the friends of Britain in America, are the friends of your government; the enemies to British depredations are the enemies of your government, and Jacobins who love the French; let us make a common cause of it; we can mutually assist each other." Mr. Pinckney was too prudent to enter into any discussion with Lord Grenville on this delicate subject; I hope Mr. Jay has been equally so.

That the cause of the treaty, and the cause of Britain, have gone hand in hand in this country, will not, however, be disputed, by those who know the birth, patronage, and affections of its advocates; and as this dangerous instrument has a tendency to destroy our connection with France, to cut the sinews

of the national strength, to compel us to *rely* on Great Britain, and to import *supporters of our government* from thence: we cannot doubt its being the offspring of a preconceived system.

C A T O.

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No. VII.

“**T**HERE shall be,” says the 14th article, “between all the dominions of his majesty in Europe, and the territories of the United States, a *reciprocal* and perfect liberty of commerce and navigation,” &c. I am a little surprized that the words *reciprocal* had not smote Mr. Jay’s conscience, when the very sentence in which he uses it, holds forth partial advantages to Britain, and none to America. Why must all the territories of the United States be laid open to British merchants; whilst ours are confined only to the spot precisely on which they find no interest in settling? Were we permitted to settle and carry on trade in the East or West Indies, on the footing of natives, many would find an interest in availing themselves of it. But what American merchant will think of establishing a mercantile house in England, unless in partnership with a native of that country? in which case the article is useless to him. Is it not evident, that this is part of the system I hinted at in my last? It will be still more so, when we reflect, that several modes of retaliation were proposed by Mr. Jefferson, as the means of compelling Britain to treat us as we merited, in return for the great benefit we permitted her to derive from our commerce. Among others, he suggests, “that where a nation refuses permission to our merchants and factors to reside within certain parts of their dominions, we may, if it should be thought expedient, refuse residence to theirs, in any or every part of ours, or modify their transactions.”

The framers of the treaty apprehended, that in the course either of commercial or political events, such prohibition, or some partial restraint, might become necessary: they, therefore, without any equivalent, bound the hands of this country; while the only restraints which Britain would ever find it expedient to impose, were left in full force.—It is remarkable, that all the means that have ever been proposed for counteracting the restrictive laws of Britain, either by individuals, by states, and by congress itself, have been carefully examined by our negociator; not to advance them by his treaty, but pre-

cisely to take from his country the means of carrying them into effect. The several importing states, prior to the organization of the federal government, thought it necessary, by partial laws on the British trade, to force her to put ours upon a better footing; in this opinion, the popular branch of congress twice agreed. It was determined by this treaty to put it in future out of our power; and we bind ourselves to let the British continue their restrictions, but to impose none. Congress agree to a tonnage and duty which is to give the navigation of the United States some advantage over that of foreigners. Mr. Jay agrees (in consideration, I suppose, of the kind treatment we have received from that nation) that though these regulations shall affect others, they shall be of no avail against Britain. It has been proposed to make the British debts answerable for British depredations. Mr. Jay (fearful that matter should not be left for another embassy extraordinary) makes sure again to bind our hands; and all this without any kind of equivalent. Can any body suppose that these extraordinary stipulations were accidental? Is any man so blind, as not to see in them the acts of a party determined to strengthen themselves by a foreign alliance, and to wrest from the hands of their antagonists the weapons by which their ally might be annoyed? In a royal government, and where the population amounts to ten or twelve millions, a few scattered merchants, with very limited capitals, are of no moment, and cannot have the slightest influence upon the government: but is this the case in a republic, where the population is thin, where wealth creates almost the only distinction, where the sea ports give the tone to the politics of the country? Will any man say, that circumstances may not arise in such a country, in which it would be extremely imprudent to permit the whole commerce to be carried on by foreign merchants, whose capitals will probably be infinitely larger than our own, and even suffer them to remain with us (as the treaty does) when we are at war with their native country? I would not be understood to advocate the removal of any class of men, while no danger is to be apprehended from them: but it would be certainly unwise to deprive ourselves of a right to do it, and to prevent the admission of too numerous a band of them, if political or commercial circumstances should render it proper. Why, with so much greater cause of apprehension than Britain, should we be more fearless? She does not permit the citizens of the United States to reside for the purposes of trade in any of her dominions out of Europe. She certainly does this, either because she supposes that they may be dangerous, or because

she wishes to secure the trade to her own subjects; and should either of these motives operate with less force on us?

This article concludes with the following words, "But subject always as to what respects this article, to the laws and statutes of the two countries respectively;" this must mean subject to the laws which existed at the time of the signature or ratification of the treaty; for otherwise, either party might, at will, defeat the provisions it contained, and render the whole a dead letter, which is too absurd to suppose.—In order to see, then, how far this provision is reciprocal, we will examine what laws, relative to the commerce of the two countries, were in force at that or this time.

1st. We impose upon British vessels, in common with other foreigners, a tonnage duty of 50 cents, that is, 44 beyond what our citizens pay;—this, however, is more than counter-vailed by the clause in the 15th article, which permits them to lay an equal tonnage upon our ships.

2d. We impose extra duties which may average 10 per cent. on the cargoes of foreign ships; this, however, is counter-vailed by the right the British reserve, to impose an equivalent duty. It must follow, then, that their commerce with us is absolutely free, and stands upon the same ground, as that of our own citizens. If then our commerce with Britain is equally free, the article is reciprocal; if, on the other hand, our trade is shackled by the laws which are left in force, then the article is not reciprocal.

1st. Then, Britain prohibits our trade with several parts of her dominions, except in British vessels.

2d. She imposes near 40 cents extra light money, a ton, upon our vessels, except in the port of London; this, with the 50 cents tonnage we have given her a right to lay, and the 6 cents our own vessels pay at home, make a premium on her vessels, or a duty on ours, equal to 46 cents a ton, to the disadvantage of our own navigation.

3d. She compels us, in our trade with her, to navigate only with American seamen, which is a peculiar disadvantage to a nation which, like ours, is always receiving useful hands from other countries.

4th. She does not permit her citizens to make use of American-built vessels; that is, she discourages our ship-builders; while, by the treaty, we encourage hers.

5th. She does not permit American vessels to bring her any commodities, except such as are the growth and manufacture of our own country, while we permit her to bring us the commodities of every country.

6th. She prohibits our carrying articles from one of her ports to another; while she may carry from one of our ports to another, subject to an extra tonnage duty, of 44 cents.

7th. She prohibits the exportation of many articles to this country from her European dominions.

8th. She prohibits the importation of salted fish, bacon, salt provisions, whale-oil, &c. and even grain, for home consumption, except when the price of wheat is above 50s. sterling the quarter.

9th. She lays a very heavy duty upon a variety of the articles of this country, tobacco and rice, particularly; while we lay none upon her but such as by the treaty we have allowed her to equalize.

10th. She does not permit our citizens to settle for the purposes of commerce, in any part of her dominions out of Europe.

All these restrictions, and some slighter ones that might be mentioned, are imposed on us by laws, which, by the 14th article, we have preserved in full force; at the same time, that we have agreed, that the only two checks we had placed on her commerce and navigation, shall be done away; for a countervailing duty, or a repeal of the duty, amounts exactly to the same thing; except so far as the repeal would affect the revenue, that no new ones shall be imposed. Would not any body have imagined, that this long list of burdens would have made Lord Grenville blush to ask, or Mr. Jay to grant, countervailing duties, when all we had done, was already countervailed, at least ten fold. Where is the reciprocity of this article? What could be our envoy's inducement to enter into it? Were we afraid, that our merchants would not be suffered to settle in Britain without it? Was it an object of any moment if they did not? was he fearful that they would lay new burdens upon us? was not the catalogue of oppression as full as it could be? had not Britain herself already acquiesced near six years in the justice of our imposing a duty upon her shipping and merchandizes? has she stipulated for equalizing duties with other nations, on whom she has imposed similar burdens, and who in return have taxed her trade? is there a nation in the world, from whom she derives so many advantages as from us, or who burdens her trade so little? and have we no right to any return for all this? could the British court have objected, if we were to treat on the footing of reciprocal advantages, if Mr. Jay had stated each of these restrictions, and demanded an equivalent for it, if it would break in too much on their system to remove them? Lord Grenville knew, that it was in our power to meet them by similar laws: and that if we forbore to do so, it was

from a spirit of conciliation, and because that we believed, that the equivalent might be settled by treaty to mutual advantage. But to submit to all, to ask no equivalent, to relinquish the right of doing ourselves justice, was a most unheard-of desertion of the interests of our own country. It was one which no other nation in the world would suffer to pass with impunity, and which I grieve to think a single native of America can be found to justify.

It is true, that this article proposes, that two years after the present war, the contracting parties may treat for the equalization of the duties, &c. but that in the mean time it is to remain on the footing the treaty places it. Upon what ground was this discussion postponed? if Mr. Jay was sent to make a treaty, why did he not make it, but leave it open to future discussion? is it probable that at the end of the war (which may last several years) and two years after, that is, when Britain has had time to recruit her strength and her finances, she will be more moderate in her views, than at this moment, when she is overwhelmed with calamities? Is it probable, that at that period our trade will be of more consequence to her than now, that she has lost two important branches of it, Holland and France? It should be recollected, that the exportations from the British dominions to the United States, taken on the medium of two years, 1784 and 1785, exceed one-third of all her manufactures exported *to all the rest of the world.*

At that time, Holland, which, next to America, is their best customer, had not declined their market. At present it will not be extravagant to allege, that the United States consume two-fifths of all the British manufactures that are exported to foreign nations. The distress that a rupture with us, or any interruption of our commerce, would occasion in England, is beyond calculation. This, then, was the moment to treat upon the most advantageous terms, or to exert our inherent right to do ourselves justice *by our own laws.* It is in knowing how to take advantage of such circumstances, that true policy consists. Every one remembers how much the president's foresight was commended in having seized upon this moment to send a special envoy. But this envoy, it seems, thought differently from the president, and agrees formally, that we shall take no advantage of the ground on which we stand; but that, when Britain may have recovered what she has lost, then we will treat.

Is there any kind of connection between the present war and our commercial regulations with Britain? If not, why have any reference to the war, in setting the time for making our arrangements? Why but to give Britain still greater advan-

tages than she dare to ask now? If the present arrangement will, as I have shown, oppress our commerce and destroy our navigation—if it banishes our seamen, and starves our ship carpenters—if it puts our whole trade into the hands of foreigners even for a time—how many years will it take, under the wisest and best arrangements, to recover the ground we had lost?—Every thing must be re-created; and the discouragement we must then give to foreign navigation, after having lost our own, must create a temporary distress, which will be felt by every order of people. This distress will again be the argument for new humiliations, and our subjugation to Britain be rendered perpetual. If the present moment was (contrary to the general sentiment) that in which we could not treat to advantage, why treat at all? Why relinquish every thing, to gain nothing?

C A T O.

[TO BE CONTINUED.]



## Defence of Mr. Jay's Treaty.

### No. IX.

**I**T was my intention to have comprised in two numbers, the examination of the 2d article; but on experiment, it was found expedient to add a third. I resume, for a moment, the subject of indemnification for the detention of the posts.

As an inducement to persist in this claim, we are assured, that the magnanimity of France, would have procured for us, its establishment. In the first place, this supposes that we were to have become a party in the war; for otherwise it would be silly to imagine, that France would, on our account, embarrass herself with a difficulty of this sort. In this case, and supposing the object accomplished, still the injuries, losses, and expenses of war would have greatly overbalanced the advantage gained. But what certainty have we, that France will be able to dictate terms, even for herself? Could we expect or rely, after the terrible and wasting war, in which she has been engaged, that she would be willing to encumber the making of peace, with additional obstacles, to secure so trifling a point with us? Would it be even humane, or friendly in us, to ask her to risk the pro-



longing of her calamities, for so trivial an object? A conduct like this, with reference either to France, or to ourselves, would resemble that of the gamester, who should play *millions* against *farthings*. It is so preposterous in every sense, that the recommendation of it, if sincere, admits of but one construction, namely, that those who recommend it, wish our envoy to have acted not as if he had been sent *to make peace*, but as if he had been sent *to make war*, to blow and spread the desolating flames of discord and contention.

There is a marked dissingenuousness, running through the observations, which are made to the prejudice of the treaty: they endeavour constantly to have it understood, that our envoy abandoned, without effort, the claims which have not been established.—Whence is this inferred? Is it from the silence of the treaty? Surely we can only expect to find there what was *agreed upon*, not what was *discussed* and *rejected*. The truth is, that as well on this point of indemnification, for the detention of the posts, as on that of compensation, for the negroes carried away, our envoy urged our pretensions, as far, and as long, as he could do it, without making them final obstacles to the progress of the negotiation.

I shall now enumerate and answer the remaining objections, which have appeared against this article. They are these: 1. That the posts to be surrendered, instead of being described in general terms, should, for greater certainty, have been specially enumerated; that now the uncertainty of a part of the boundary line, may furnish a pretext for detaining some of them. 2. That the expressions “precincts and jurisdictions,” which are excepted from our right of settlement, previous to the surrender, are so vague and indeterminate, as to be capable of being made to countenance encroachments. 3. That it was improper to have stipulated, for the inhabitants, the option of residing and continuing British subjects, or of becoming American citizens: that the first was to establish, by treaty, a British colony, within our limits; the last to admit, without the power of exception, bitter enemies of the country, to the privileges of citizens. 4. That the securing to those inhabitants, the enjoyment of their property is exceptionable, as being a “cession without equivalent of an *indefinite extent of territory*.” This is the character given to it by the meeting at Philadelphia.

The answer to the first objection, is, that the enumeration proposed might have included the very danger which is objected to the provision as it stands, and which is completely avoided by it. The principal posts occupied by the British, are known and might easily have been enumerated; but there is a possibility of

there being others not known, which might have escaped. Last year there started up a post, which had not been before heard of, on the pretence of an old trading establishment. Who knows with absolute certainty, how many similar cases may exist in the vast extent of wilderness, as far as the lake of the Woods, which, for several years past, has been inaccessible to us? If our envoy's information could have been perfect, at the time of his last advices from America; between that period and the signing of the treaty, changes might have taken place, that is, trading houses might have grown into military posts, as they did in the case referred to; a case, which, in fact, happened after the departure of our envoy from the United States. Was it not far better than to hazard an imperfect specification, to use terms so general and comprehensive, as could not fail, in any circumstances, to embrace every case? Certainly it was; and the terms "*all ports and places,*" which are those used in the treaty, are thus comprehensive. Nothing can escape them.

Neither is there the least danger that the uncertainty\* of a part of the boundary line, can be made a pretext for detaining the posts, which it was impossible to enumerate. This will appear from an inspection of the map—The only uncertain part of the boundary line (except that depending on the river St. Croix, which is on a side unconnected with the position of the posts) is that which is run from the lake of the Woods to the Mississippi.—The most western of our known posts, is at Michillimackinac, at or near the junction of the lakes Huron and Michigan, eastward near eleven degrees of longitude of the lake of the Woods, and about ten degrees of longitude of that point, on the Mississippi, below the falls of St. Anthony, where a survey, in order to a settlement of the line, is to begin. Moreover, our line, by the treaty of peace, is to pass through the lake Huron, and the water communication between that lake and lake Superior, and through the middle of lake Superior, and thence westward through other waters, to the lake of the Woods; that is, about half a degree of latitude more northward, and about eight degrees of longitude more westward, than any part of the lake Michigan. Whence it is manifest, that any closing line, to be drawn from the lake of the Woods to the Mississippi, must pass at a distance of several hundred miles from Michillimackinac. If the British, therefore, should be

\* This uncertainty, it is to be observed, results not from the late treaty, but from the treaty of peace. It is occasioned by its being unknown, whether any part of the Mississippi extends far enough north, to be intersected by a due west line from the lake of the Woods.

disposed to evade the surrender, they will seek for it some pretext more plausible than one which involves a palpable geographical absurdity. Nor can we desire a better proof of the ignorance or dissimulation of the objectors to the treaty, than their having contrived one of this nature.

The general terms used, were to be preferred, for the very reason, that there was a doubt about the course of a part of the boundary line; for, if there should chance to exist any post now unknown, so near the line as to render it questionable, in the first instance, on which side it may fall; the moment the line is settled, the obligation to surrender will be settled with it.

The second objection loses all force, when it is considered, that the exception can only operate till the first of June next, the period for the surrender of the posts; and that, in the mean time, there is ample space for settlement, without coming to disputable ground. There was, besides, real difficulty in an accurate definition. What the precincts and jurisdictions of the posts are, is a question of fact. In some instances, where, from there being no settlements, over which an actual jurisdiction had been exercised, a good rule might have been, the distance of gun shot from the fortifications, which might have been settled at a certain extent in miles, say three or four. But in some cases an actual jurisdiction has been exercised, under circumstances which created obstacles to a precise definition. The case of Caldwell's manor, in the vicinity of Dutchman's point, is an example. There, a mixed jurisdiction has been sometimes exercised by the British, and by the state of Vermont, connected with a disputed title to that manor; one party claiming under an ancient French grant, and the other under the state of Vermont. Detroit and its vicinity would also have occasioned embarrassment. From the situation of the settlements, and of a number of dispersed trading establishments, a latitude was likely to have been required, to which it might have been expedient to give a sanction. In such situations, where a thing is to last but a short time, it is commonly the most eligible course, to avoid definition. It is obvious, that no ill can result from the want of one, if the posts are surrendered at the time agreed; if not, it is equally plain, that it can be of no consequence, because the whole article will be void.

The third objection becomes insignificant, the moment the real state of things is adverted to. This has been described in a former number for another purpose, but will now be recapitulated, with one or two additional facts. The first posts, beginning eastward, are, Point-au-fer and Dutchman's point, on lake Champlain. The whole number of persons in this vicinity,

over whom jurisdiction has been claimed by the British, may amount to an hundred families. But the claim of jurisdiction here, has been only occasionally and feebly urged; and it is asserted in addition, by well informed persons, that the above-mentioned families have been, for some time, regularly represented in the legislature of Vermont, the ordinary civil jurisdiction of which state has, with little interruption, been extended over them. At neither of the other posts, to wit, Oswego, Niagara, the Miami, Detroit, Michillimackinac, is there any settlement, except at Detroit, where, and in the vicinity of which, there may be between two and three thousand persons, chiefly French Canadians, and their descendants. It will be understood, that I do not consider as a settlement, two or three log houses for traders.

It follows, that the number of persons who can be embraced by the privileges stipulated, is too inconsiderable to admit of attaching any political consequences whatever to the stipulation. Of what importance can it possibly be, to the United States, whether two or three thousand persons, men, women and children, are permitted to reside within their limits, either as British or American subjects, at their option? If the thing was an object of desire to Great Britain, for the accommodation of the individuals concerned, could it have merited a moment's hesitation on our part? As to residence, it is at the courtesy of nations at peace to permit the residence of the citizens of each other within their respective territories. British subjects are now free by our laws, to reside in all parts of the United States. As to the permission to become citizens, it has been the general policy and practice of our country to facilitate the naturalization of foreigners. And we may safely count on the interest of individuals, and on that desire to enjoy equal rights which is so deeply planted in the human breast, that all who resolve to make their permanent residence with us, will become citizens.

It is true, that there may be a few obnoxious characters (though I do not recollect to have heard of more than two or three) among the number of those who have acquired by the stipulation, a right to become citizens of the United States. But would it ever have been worthy of the dignity of the national wrath, to have launched its thunders against the heads of two, or three, or half a dozen despicable individuals? Can we suppose that, without a stipulation, it would have been thought worth the while to make a special exception of their cases out of the operation of our general laws of naturalization? And if this had not been done, would they not have found means, if they desired it, after the lapse of a short period, to

acquire the rights of citizens? It is to be observed, that citizens of our own, who may have committed crimes against our laws, not remitted by the treaty of peace, would find no protection under this article.

Suppose the stipulation had not been made, what would have been the probable policy of the United States? Would it not have been to leave the handful of settlers undisturbed, in quiet enjoyment of their property, and at liberty, if British subjects, to continue such, or become American citizens, on the usual conditions? A system of depopulation, or of coercion to one allegiance or another, would have been little congenial with our modes of thinking, and would not, I am persuaded, have been attempted.

If, then, the treaty only stipulates in this respect, what would have been the course of things without it, what cause for serious objection can there be on this account?

The matter of the fourth objection can only derive a moment's importance from misapprehension. It seems to have been imagined, that there are large tracts of land, held under British grants, made since the peace, which are confirmed by the part of the article that gives the inhabitants the right of removing with, selling, or *retaining* their property.

In the first place, it is to be observed, that if such grants had been made, the stipulation could not be deemed to confirm them; because our laws must determine the question, what is the property of the inhabitants; and they would rightfully decide, that the British government, since the treaty of peace, could make no valid grants of land, within our limits. Upon the ground even of its own pretensions, it could not have made such grants. Nothing more was claimed, than the right to detain the posts as a hostage. The right to grant lands pre-supposes much more, a full right of sovereignty and territory.

But in the second place, it has always been understood, and upon recent and careful enquiry is confirmed, *that the British government has never, since the peace, made a grant of lands within our limits.* It appears, indeed, to have been its policy, to prevent settlements in the vicinity of the posts.

Hence the stipulation, as it affects lands, does nothing more than confirm the property of those which were holden at the treaty of peace; neither is the quantity considerable; and it chiefly, if not altogether, depends on titles acquired under the French government, while Canada was a province of France.

In giving this confirmation, the treaty only pursues what is a constant rule among civilized nations. When territory is ceded or yielded up by one nation to another, it is a common practice,

if not a special condition, to leave the inhabitants in the enjoyment of their property. A contrary conduct would be disgraceful to a nation; nor is it very reputable to the objectors to the treaty, that they have levelled their battery against this part of it. It is a reflection upon them too, that they employ for the purpose, terms which import more than is true, even on their own supposition, and are, therefore, calculated to deceive; for the confirmation of property to individuals, could be at most a cession only of the right of soil, and not of territory, which term has a technical sense, including jurisdiction.

Let it be added, that the treaty of peace, in the article which provides "that there should be no future confiscations nor prosecutions against any person or persons, by reason of the part which he or they might have taken in the war; and that no person should, on that account, suffer any future loss or damage, either in his person, liberty or property," did substantially what is made an objection to the treaty, under consideration. It will not, I believe, be disputed, that it gave protection to all property antecedently owned, and not confiscated. Indeed it is a question, whether the stipulations cited, would not have effected, with regard to other rights than those of property, a great part of what is regulated by the last treaty. Its provisions, in this particular, were, perhaps, in the main, unnecessary, further than to obviate a doubt which might have arisen from the suspension of the treaty, by the withholding of the posts.

Thus have I gone through every objection to the second article, which is in any degree colourable; and I flatter myself have shown not only that the acquisition made by it, is of great and real value, but that it stands as well as circumstances permitted, and is defensible in its details. I have been the more particular in the examination, because the assailants of the treaty have exerted all their ingenuity to discredit this article, from a consciousness, no doubt, that it is a very valuable item of the treaty; and that it was important to their cause, to envelope it in as thick a cloud of objection as they were able to contrive. As an expedient of party, there is some merit in the artifice; but a sensible people will see that it is merely artifice. It is a false calculation, that the people of this country can ever be ultimately deceived.

CAMILLUS.

## No. X.

**T**HE object of the third article is connected with that of the second. The surrender of the posts naturally drew with it an arrangement, with regard to inland trade and navigation. Such an arrangement, convenient in several respects, appears to be in some respects necessary. To restrain the Indians on either side of the line, from trading with the one party or the other, at discretion, besides the questionableness of the right, could not be attempted without rendering them disgusted and hostile. The truth of this seems to have influenced the conduct of Great Britain and France, while the latter was in possession of Canada. The 15th article of the treaty of peace of Utrecht, in the year 1713, allows free liberty to the Indians on each side, to resort for trade to the British and French colonies. It is to be observed, too, that the Indians not only insist on a right of going to trade with whom they please, but of permitting whom they please to come to trade with them, and also to reside among them for that purpose.—Thus, the southern and south-western Indians within our limits, maintain a constant intercourse with Spain, established on the basis of treaty—nor has their right to do it, been hitherto contested by the United States.—Indeed, on what clear principle of justice could this natural right of trade, of a people not subject to our ordinary jurisdiction, be disputed? This claim, on their part, gives a corresponding claim to neighbouring nations, to trade with them. Spain would think the pretension to exclude her inadmissible—And Great Britain would have thought the same, if she had found it her interest to assert the right of intercourse; views which would always be seconded by the Indians from regard to their own interest and independence. It was a point, therefore, which it much concerned the preservation of good understanding between the parties and with the Indians, to regulate on some equitable plan; and the more liberal the plan, the more agreeable to a natural course of things, and to the free participation of mutual advantages; the more likely was it to promote and prolong that important benefit.

In the second place, the expediency of some arrangement was indicated by the circumstance of the boundary line between the parties, running for an extent of sixteen hundred miles through the middle of the same rivers, lakes, and waters. It may be deemed impossible from the varying course of winds and currents, for the ships of one party to keep themselves constantly within their own limits, without passing or trans-

gressing those of the other. How, indeed, was the precise middle line of those great lakes to be always known?

It appears evident, that to render the navigation of these waters useful to, and safe for, both parties, it was requisite that they should become common. Without this, frequent forfeitures to enforce interdictions of intercourse might be incurred—and there would be constant danger of interference and controversy. It is probable, too, that when those waters are better explored in their whole extent, it will be found that the best navigation of those lakes is sometimes on the one side, sometimes on the other, and that common convenience will, in this respect, also be promoted by community of right.

Again—It is almost always mutually beneficial for bordering territories to have free and friendly intercourse with each other.—This relates not only to the advantages of an interchange of commodities, for the supply of mutual wants, and to those of the reciprocal creation of industry, connected with that interchange, but also to those of avoiding jealousy, collision, and contest, of preserving friendship and harmony.—Proximity of territory invites to trade—the bordering inhabitants, in spite of every prohibition, will endeavour to carry it on;—if not allowed, illicit adventures take place of the regular operations of legalised commerce—individual interest leads to collusions to evade restraining regulations—habits of infracting the laws are produced—morals are perverted—securities, necessarily great, in proportion as they counteract the natural course of things, lay the foundation of discontents and quarrels. Perhaps it may be safely affirmed, that freedom of intercourse, or violent hatred and enmity, are the alternative in every case of contiguity of territory.

The maxims of the United States have hitherto favored a free intercourse with all the world. They have conceived, that they had nothing to fear from the unrestrained competition of commercial enterprize, and have only desired to be admitted to it on equal terms. Hence, not only the communication by sea has been open, with the adjacent territories, on our continent, as well as with more distant quarters of the globe; but two ports have been erected on lake Champlain for the convenience of interior commerce with Canada: and there is no restriction upon any nation, to come by the Mississippi to the only port which has been established for that side of the union. These arrangements have excited neither blame nor criticism.

Our envoy, therefore, in agreeing to a liberal plan of intercourse with the British territories in our neighbourhood, has



conformed to the general spirit of our country, and to the general policy of our laws. Great Britain, in acceding to such a plan, departed from her system of colonial monopoly, a departure which ought to be one recommendation of the plan to us; for every relaxation of that system paves the way for other and further relaxations. It might have been expected, also, that a spirit of jealousy might have proved an obstacle on the part of Great Britain; since, especially if we consider the composition of those who inhabit, and are likely to inhabit Canada, it is morally certain, that there must be, as the result of a free intercourse, a far greater momentum of influence of the United States upon Canada, than of Canada upon the United States. It would not have been surprising, if this jealousy had sought to keep us at a distance, and had counteracted the wiser policy of limiting our desires by giving us possession of what is alone to us truly desirable, the advantages of commerce, rather than of suffering our wishes to be stimulated and extended by privation and restraint.

New ideas seem of late to have made their way among us. The extremes of commercial jealousy are inculcated.—Regulation, restriction, exclusion, are now with many the favorite topics—instead of feeling pleasure, that new avenues of trade are opened, a thousand dangers and mischiefs are portrayed when the occasion occurs. Free trade with all the world seems to have dwindled into trade with France and her dominions. The love-sick partizans of that country appear to regard her as the epitome of the universe, to have adopted for their motto, “All for love, and the world well lost.”

These new propensities towards commercial jealousy, have been remarkably exemplified with respect to the article immediately under consideration. Truly estimated, it is a valuable ingredient in the treaty; and yet there is, perhaps, no part of it which has been more severely reprobated.—It will be easy to show that it has been extremely misrepresented, and that what have been deemed very exceptionable features, do not exist at all.

We will first examine what the article really does contain, and afterwards what are the comparative advantages likely to result to the two countries.

The main stipulation is, that “it shall at all times be free to his majesty’s subjects, and to the citizens of the United States—and also to the Indians dwelling on either side of the boundary line, freely to pass and repass, *by land and inland navigation*, into the respective territories and countries of the two parties on the continent of America (the country within the

limits of the Hudson's Bay company only excepted) and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other."

The subject matter of this stipulation is plainly *inland trade and commerce*, to be carried on *by land passage, and inland navigation*. This appears, 1st, from the terms of the article. The subjects and citizens of the two parties, and also the Indians dwelling on each side the boundary line, are freely to pass and repass. In what manner? *by land and inland navigation*: to what places? into the respective territories and countries of the two parties, on the continent of America (the country of the Hudson's Bay company only excepted). They are also to navigate all the lakes, rivers, and *waters thereof*, and freely to carry on trade and commerce with each other. This right to navigate lakes, rivers, and waters, must be understood with reference to inland navigation; because this gives it a sense conformable with the antecedent clause, with which it is immediately connected, as part of a sentence; because the right to *pass and repass*, being expressly restricted to land and inland navigation, it would not be natural to extend it by implication, on the strength of an ambiguous term, to passage by sea, or by any thing more than inland navigation; because the lakes and rivers have direct reference to inland navigation, showing that to be the object in view; and the word "waters," from the order in which it stands, will most consistently with propriety of composition, be understood as something less than lakes and rivers, as ponds, canals, and those amphibious waters, to which it is scarcely possible to give a name; and because the waters mentioned are "waters thereof," that is, waters of the territories and countries of the two parties on the continent of America; a description which cannot very aptly be applied to the sea, or be supposed to include navigation by sea to the United States, or from them to the British territories. It is true, that nations, for various purposes, claim and exercise jurisdiction over the seas, immediately adjacent to their coasts; yet this is subject to the common right of nations, to the innocent use of those seas for navigation; and it is not, *prima facie*, presumable, that two nations, speaking of the waters of each other, would mean to give this appropriate denomination to waters, in which both claimed some common right.—The usual description of such waters in treaties is, "the *seas near* the countries," &c.—But were it otherwise, still the navigating from the *open* sea into those waters, could not be within the permission to navigate those waters, and might be prohibited.

The above construction is confirmed by the general complexion of the treaty. It is the manifest province of the eighteen articles, which succeed the first ten, to regulate external commerce and navigation. The regulations they contain, are introduced thus, by the 11th article: "It is agreed between his majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce, between their respective people, in the manner, under the limitations, and on the conditions specified in the following articles."—Then follow articles, which provide fully and distinctly for trade and navigation between the United States and the British West Indies, between the Asiatic dominions of Great Britain and the United States; and lastly, between the European dominions of Great Britain and the United States. These eighteen articles properly constitute the treaty of commerce and navigation between the two countries. Their general scope, and some special provisions which they contain, prove that the object of the third article is local and partial; that it contemplates exclusively, an interior commerce, by land and inland navigation (except as to the Mississippi) and particularly that it does not reach at all our Atlantic ports. An instance of one of the special provisions alluded to, will be cited in the further examination of this article.

In opposition to this construction, much stress is laid upon the provisions which immediately succeed the clauses that have been quoted. They are in these words: "But it is understood, that this article does not extend to the admission of vessels of the United States into the seaports, harbours, bays, or creeks of his majesty's said territories, nor into such parts of the rivers in his said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec: nor to the admission of British vessels from the sea, into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea!" The last, it is said, contains an implication, that under this article, British vessels have a right to come to our highest ports of entry for foreign vessels from the sea, while we are excluded from the seaports of the British territories on this continent.

But this is altogether an erroneous inference. The clauses last cited are inserted for greater caution, to guard expressly against any construction of the article, by implications more or less remote; contrary to the actual regulations of the parties, with regard to external commerce and navigation. Great Britain does not now permit a trade by sea to Nova Scotia and Canada.

She therefore declares that the article shall not be deemed to contravene this regulation. The United States now permit foreign vessels to come to certain ports of entry from the sea, but exclude them from other more interior ports of entry, to which our own vessels may come.\* It is therefore declared on their part, that the article shall not be construed to contravene this regulation. This was the more proper, as the right of inland navigation might have given some colour to the claim of going from an outer to an inner port of entry. But this negative of an implication, which might have found some colour in the principal provision, can never be construed into an affirmative grant of a very important privilege, foreign to that principal provision. The main object of the article, it has been seen, is trade by land, and inland navigation. Trade and navigation by sea, with our sea ports, is an entirely different thing. To infer a positive grant of this privilege, from a clause which says, that the right of inland navigation shall not be construed to permit vessels coming from the sea, to go from the ports of entry, to which our laws now restrict them, to more interior ports, would be contrary to reason, and to every rule of sound construction. Such a privilege could never be permitted to be founded upon any thing less than a positive and explicit grant. It could never be supported by an implication drawn from an article relative to a local and partial object, much less by an implication drawn from the negative of another implication. The pretension, that all our ports were laid open to Great Britain by a covert and side-wind provision, and this without reciprocity, without a right of access to a single sea port of the other party in any part of the world, would be too monstrous to be tolerated for an instant. The principles of equity between nations, and the established rules of interpretation, would unite to condemn so great an inequality, if any other sense could possibly be found for the terms from which it might be pretended to be deduced. It would be in the present case the more inadmissible, because the object is embraced and regulated by other parts of the treaty on terms of reciprocity.

The different mode of expression, in the clause last cited, when speaking of the British territories, and when speaking of the United States, has furnished an argument for the inference which has been stated. But this difference is accounted for by

\* An example of this is found in the state of New York. Foreign vessels can only enter and unlade at the city of New York; vessels of the United States may enter at the city of Hudson, and unlade there and at Albany.

the difference in the actual regulations of the parties, as described above. The object was on each side to *oust* an implication interfering with those regulations. The expressions to effect it were commensurate with the state of the fact on each side; and consequently do not warrant any collateral or special inference.

The only positive effect of these clauses is to establish, that the navigation from Montreal to Quebec, shall be carried on in what are called "small vessels, trading bona fide between Montreal and Quebec." In determining their sense, it merits some observation, that they do not profess to *except from* the operation of the general provisions of the article, the *sea ports*, &c. of the British territories; but declare, that it is understood that those provisions *do not extend to* them. This is more a declaration that the antecedent provisions were not so broad as to comprehend the cases, than an exception of the cases from the operation of those provisions.

Those who are not familiar with laws and treaties, may feel some difficulty about the position, that particular clauses are introduced, only for greater caution, without producing any new effect; but those who are familiar with such subjects, know, that there is scarcely a law or a treaty which does not offer examples of the use of similar clauses; and it not unfrequently happens, that a clear meaning of the principal provision is rendered obscure by the excess of explanatory precaution.

The next clause of this article is an exception to the general design of it, confirming the construction I have given. "The river Mississippi shall, *however*, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to which soever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain."

If the general provision gives access to all our ports, which must be the doctrine, if it gives access to our Atlantic ports, then it would equally have this effect with regard to the Mississippi. But this clause clearly implies the contrary, not only by introducing a special provision for the ports of the Mississippi, but by introducing it expressly, as a further or additional agreement; the words are, "*it is further agreed*," &c. and these ports are to be enjoyed by each party, *in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain*. This reference to our Atlantic ports, coupling them with the ports of Great

Britain, shows that the Mississippi ports are to be regulated by a rule or standard different from the ports for that inland navigation, which is the general object of the article; else, why that special reference? why not have stopped at the words "*used by both parties?*" If it be said, that the reference to our Atlantic ports implies, that they are within the purview of the article, let it be observed, that the same argument would prove that the ports of Great Britain are also within its purview, which is plainly erroneous; for the main provisions are expressly confined to the territories of the parties on this continent. The conclusion is, that the reference is to a standard, out of the article, and depending on other parts of the treaty.

It may be useful to observe here, that the Mississippi ports being to be used only in as ample, and not in a more ample manner, than our Atlantic ports and the ports of Great Britain, will be liable at all times to all the regulations, privileges; and restrictions of the ports with which they are afforded.

The next clause is a still further refutation of the construction which I oppose.

"All goods and merchandize, *whose importation into his majesty's said territories in America shall not be entirely prohibited*, may freely, for the purposes of commerce, be carried into the same, in the manner *aforsaid*, by the citizens of the United States; and such goods and merchandize shall be subject to *no higher or other duties than would be payable by his majesty's subjects on the importation of the same from Europe, into the said territories*: and in like manner, all goods and merchandize, *whose importation into the United States shall not be wholly prohibited*, may freely, for the purposes of commerce, be carried into the same, in the manner *aforsaid*, subject to *no higher or other duties than would be payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the said States*: and all goods not prohibited to be exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, paying duty as *aforsaid*."

The words, "*in the manner aforsaid*," occur twice in these clauses, and their equivalent, "*in like manner*" once. What is the meaning of this so often repeated phrase? it cannot be presumed, that it would have been inserted so frequently without having to perform some office of consequence. I answer, that it is evidently the substitute for these other words of the main provision, "*by land and inland navigation*." This is "*the manner*"

*aforesaid.*—This is the channel, through which goods and merchandizes passing, would be subject to no other or higher duties than would be payable in the British territories by British subjects, if imported from Europe; or in the territories of the United States, by citizens of the United States, if brought by American vessels into our Atlantic ports. No other reasonable use can be found for the terms. If they are denied this sense, they had much better been omitted, as being not only useless, but as giving cause to suppose a restriction of what, it is pretended, was designed to be general—a right of importing in every way, and into all parts of the United States, goods and merchandize, if not entirely prohibited, on the same duties as are payable by our own citizens when brought in our own vessels.

These words, “whose importation into the United States shall not be *entirely* prohibited,” is a further key to the true sense of the article. They are equivalent to these other words, “whose importation *into all parts* of the United States shall not be prohibited.”—The design of this clause is to prevent importation, through the particular channels contemplated by the article, being obstructed by a partial or by any other than a general prohibition. As long as certain goods may be introduced into the United States through the Atlantic ports, they may also be brought into them through the channels designated by this article, that is, by land and inland navigation. The making a prohibition in the given case to depend on a general prohibition, is conclusive to prove, that the article contemplates only *particular channels*. On any other supposition, the clause is nonsense. The true reading, then, of this part of the article, must be as follows: “Goods and merchandize, whose importation *into all parts* of the United States shall not be prohibited, may freely, for the purposes of commerce, be carried into the same, *in manner aforesaid*, that is, *by land and inland navigation*, from the territories of his majesty on the continent of America.”

There are still other expressions in the article, which are likewise an index to its meaning. They are these, “*would be payable* by the citizens of the United States, on the *importation of the same in American vessels into the Atlantic ports of the said states.*” This reference to a rate of duties, which would be payable on importation into the Atlantic ports, as a rule or guide for the rate of duties, which is to prevail in the case meant to be comprehended in the article, is full evidence that importation in the Atlantic ports is not included in that case. The mention of importation in American vessels, confirms this conclusion,

as it shows that the article itself contemplates, that the discrimination made by our existing laws may continue.

But the matter is put out of all doubt by those parts of the fifteenth article which reserve to the British government the right of imposing such duty as may be adequate to *counter-vail the difference* of duty, *now payable* on the importation of European and Asiatic goods, when imported into the United States in British and American vessels; and which stipulate, that “the United States will not *INCREASE the now subsisting difference* between the duties payable on the importation of any articles in British or American vessels.”

This is a demonstration, that the treaty contemplates, as consistent with it, a continuance of the present difference of duties on importations in American and British vessels; and consequently, that the third article, which stipulates equal duties, as to the cases within it, does not extend to importations into our Atlantic ports, but is confined to importations by land and inland navigation. Though this article be of temporary duration, yet as an evidence of the sense of the parties, it will always serve as a rule of construction for every part of the instrument.

These different views of the article establish, beyond the possibility of doubt, that, except with regard to the Mississippi, inland trade and navigation are its sole objects—that it grants no right or privilege whatever in our Atlantic ports—and that with regard to the ports of the Mississippi, it only establishes this principle, that Great Britain shall always enjoy there the same privileges which by treaty or law she is allowed to have in our Atlantic ports.

I remark incidentally, for a purpose which will appear hereafter, that as far as this article is concerned, we are free to prohibit the importation into the United States at large, of any British article whatever, though we cannot prohibit its importation *partially*, that is, merely from her territories in our neighbourhood, by land or inland navigation; but we may prohibit the importation by sea from those territories; *nor is there any other part of the treaty by which this is prevented.*

The remaining clauses of this article establish the following points: “That no duty of entry shall be levied by either party on peltries brought by land or inland navigation, into the respective territories;” that Indians, passing and repassing with their own goods, shall pay no impost or duty upon them; but goods in bales, or other large packages, unusual among Indians, shall not be considered as their goods; that tolls and rates of ferriage shall be the same on both sides as are paid



by natives—that no duties shall be paid by either party on the mere transit of goods across portages and carrying places from one part to another of the territory of the same party; that the respective governments will promote friendship, good neighbourhood, and amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

I shall conclude this paper with an observation or two on the meaning of the terms, inland navigation. These terms have no technical meaning defined in the laws of either country, nor have they any precise meaning assigned by the law of nations. They, however, *ex vi termini*, exclude navigation from the sea; and as a general rule, I should say, that inland navigation begins there, where sea navigation ends. Where is this? I answer, at the ports of entry from the sea. By the laws of Great Britain and of the United States, all rivers are arms of the sea as far as the tides flow—It would be a consequence of this principle, that sea navigation would reach to the head of tide water. But some more obvious and notorious rule ought to govern the interpretation of national compacts. The ports of entry from the sea are conceived to be the proper rule.

In the case under consideration, the general spirit of the article may require, that all the waters which divide the territories of the parties should be in their whole extent common to both.—As to other communicating waters, accessible under the article, the reciprocal limit of the right will be the ports of entry from the sea. This is to be understood with the exception of the Mississippi, to the ports of which, access from the sea is granted under the qualification which has been pointed out.

C A M I L L U S.

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No. XI.

**T**HE foregoing analysis of the third article, by fixing its true meaning, enables us to detect some gross errors, which have been principal sources of prejudice against it.—One of these is, that the article gives to the other party a right of access to all our ports, while it excludes us from the ports of the British territories in our neighbourhood.—It has

been clearly shown, that it gives no right of access to any one of our Atlantic ports, and that it gives only a qualified and conditional access to the ports which we may have on the Mississippi, to be regulated by the privileges at any time allowed by law or compact in our Atlantic ports, and liable to cease with the cessation of those privileges.—The charge, therefore, of want of reciprocity in this particular, vanishes, and with it all the exceptionable consequences which have been the fruit of the error. Such is the assertion of DECIUS, that a British trader may set out from Canada, traverse our lakes, rivers and waters to New York, and thence to Philadelphia, while we are precluded from the navigation of the St. Lawrence, and other British rivers lower than the highest ports of entry from the sea. It would be an indulgent construction of the article, not to stop the British trader at Hudson, as the highest port of entry from the sea, and the boundary of inland navigation; but he could certainly have no claim of right under it, to go from New York to Philadelphia, because he must necessarily go by sea to arrive at the first place, and no such permission is stipulated by the article. Such, also, is the assertion of CATO, that Great Britain is admitted to all the advantages of which our Atlantic rivers are susceptible. The rivers, upon which no part of their territory borders, and which their vessels can only approach by sea, are certainly excepted.

Another of the errors referred to, is this, that goods and merchandize may, under this article, be imported into any *part* of the United States, upon the same duties as are now payable when imported by citizens of the United States, and in vessels of the United States. It has been clearly proved, that there is no pretence for this position, and that equality of duties only applies to importations from the British territories, in our neighbourhood, by land and inland navigation.

CATO, DECIUS, and other writers against the treaty, have fallen into this strange error, and have founded upon it much angry declamation. The first, however, embarrassed in his construction, by the provision which reserves to Great Britain the right of laying countervailing duties, endeavours to escape from it by distinguishing between goods imported for Indian trade, and those imported for other uses. Whatever may be the case with regard to the latter, the former, he is convinced, are certainly entitled to admission into our Atlantic ports, on the privileged rights of duty; though he is very naturally perplexed to see how the discrimination could be maintained in practice. But where does he find room for this distinction? Not in the provision respecting countervailing duties, for that is general—not

in the clause of the third article, to which he gives the interpretation, for that is directly against his distinction. The goods and merchandize, for the privileged importation of which it provides, are restricted to no particular object—have no special reference to Indian more than to other trade: on the contrary, they are expressly to be imported for “the purposes of commerce” at large; so that in the cases in which they are privileged, they are equally so, whether it be for a trade with our citizens or with Indians. The distinction therefore, only proves the embarrassment of its inventor, without solving the difficulty. A curious assertion has been made on this article of duties. It has been said, that while we are obliged to admit British goods on the same duties with those paid by our own citizens, or importation in our own vessels, Great Britain, under the right to lay countervailing duties, may incumber us with an additional ten per cent. Can any thing be more absurd than the position, that the right to lay *countervailing* duties exists in a case, where there is no difference of duty to *counter-vail*? The term is manifestly a relative one, and can only operate where there is something on our side to be countervailed or counterbalanced, and in an exact ratio to it. If it be true, that a very high law character is the writer of CATO, we cannot but be surprised at such extreme inaccuracy.

Other errors, no less considerable, will appear in the progress of the examination; but it will facilitate the detection of these, and tend to a more thorough understanding of the article, to state in this place some general facts, which are material in a comparison of the advantages and disadvantages of the article, to the respective parties.

1st. The fur trade within our limits is, to the fur trade within the British limits, as one to seven, nearly; that is, the trade with the Indians, on the British side of the boundary line, is about seven times greater than the same trade on our side of that line. This fact is stated as the result of repeated enquiry from well informed persons for several years past. It will not appear extraordinary to those who recollect how much the Indians on our side are circumscribed in their hunting-grounds, and to what a degree they are reduced in numbers by the frequent wars, in which they have been engaged with us: while the tribes on the British side of the line are not only far more numerous, but enjoy an immense undisturbed range of wilderness. The more rapid progress of settlement on our side than on the other, will fast increase the existing disparity.

2d. Our communication with the sea is more easy, safe, and expeditious, than that of Canada, by the St. Lawrence. Ac-

cordingly, while our vessels ordinarily make two voyages in a year, to and from Europe, the British vessels, in the Canada trade, are, from the course of the seasons, and the nature of the navigation, confined to one voyage in a year. Though hitherto, from temporary circumstances, this difference has not made any sensible difference in the price of transportation; yet in its permanent operation, it is hardly possible that it should not give us a material advantage in the competition for the supply of European goods to a large part of Canada, especially that which is denominated Upper Canada. The city of Hudson, distant 124 miles from the city of New York, is as near to the junction of the river Cataraquy and lake Ontario, as Montreal, which last is near four hundred miles distant from the mouth of the St. Lawrence. When the canals, now in rapid execution, are completed, there will be water communication the whole way from the city of Hudson to Ontario.

3d. The supply of East India goods to Canada, is likely to be always easier and cheaper through us, than in any other way. According to the present British system, Canada is supplied through Britain. It is obvious how much the charges of this double voyage must enhance the prices of the articles, when delivered in Canada. A direct trade between the East Indies and Canada, would suppose a change in the British system, to which there are great obstacles; and even then, there are circumstances which would secure to us an advantageous competition.—It is a fact, which serves to illustrate our advantages, that East India articles, including teas, are, upon an average, cheaper in the United States than in England.

The facts demonstrate that a trade between us and the British territories in our neighbourhood, upon equal terms as to privilege, must afford a balance of advantages on our side. As to the fur trade, for a participation in one eighth of the whole, which we concede, we gain a participation in seven-eighths which is conceded to us. As to the European and East India trade, we acquire the right of competition upon equal terms of privilege with real and considerable advantages of situation.

The stipulation with regard to equal duties, was essential to the preservation of our superiority of advantages in this trade, while it would not interfere with the general policy of our regulation, concerning the difference of duties on goods imported in our own and in foreign bottoms; because the supplies which can come to us through Canada, for the reasons already given, must be inconsiderable—because, also, distance would soon countervail, in expenses of transportation, the effect of the difference of duties in our market—and because, in the

last place, this difference is not very sensible, owing to the large proportion of goods which are imported in the names of our own citizens. I say nothing here of the practicability, on general grounds, of long maintaining with effect this regulation.

Is it not wonderful, considering the real state of the trade, as depending on locality, that the treaty should be charged with sacrificing the fur trade to the British? If there be any sacrifice, is it not on their side; when the fact is, that the quantity of trade in which they admit us to equal privileges is seven times greater than that in which we admit them to equal privileges?

The arguments against the treaty on this point, are not only full of falsity, but they are in contradiction with each other.

On the one hand, it is argued that our communication from the sea, with the Indian country, being much easier than by the St. Lawrence, we could furnish English goods cheaper, and of course could have continued the Indian trade in its usual channel, even from the British side of the lakes; nor could they have prevented it, without giving such disgust to the Indians, as would have made them dangerous neighbours.—On the other hand, it is argued, that from superiority of capital, better knowledge of the trade, a better established connection of customers, the British will be able to supplant us, even in our own territories, and to acquire a monopoly of the whole fur trade.

Propositions so opposite cannot all be true. Either the supposed faculty of supplying English goods cheaper, which, it is said, would give us a command of the Indian trade, even on the British side of the lakes, not in the power of the British to prevent, overbalances the advantages which are specified on the other side, or it does not.—If it does not, then it is not true, that it could draw to us the trade from the British side of the lakes.—If it does, then it is not true, that the British can supplant us in the trade on either side the lakes; much less that they can obtain a monopoly of it on both sides.

Besides, if it be true that the British could not prevent our trading with the Indians on their side, without giving them such disgust as to make them dangerous to their neighbours; why is it not equally true, that we could not prevent their trading with the Indians on our side, without producing a similar effect?—And if they have really a superiority of advantages, why would they not, on the principle of this argument, attract and divert the trade from us, though a mutual right to

trade with the Indians in each other's territories had not been stipulated?

The difficulty of restraining the Indians from trading at pleasure, is an idea well founded, as has been admitted in another place.—But there result from it, strong arguments in favor of reciprocation of privileges in the Indian trade, by treaty. One of them, its tendency to preserve peace and good understanding, has been already noticed; another arises from the consideration, that it will probably be the policy of the British to maintain larger military establishments on their frontier, than we shall think eligible on ours, which will render it proportionably more easy to them to restrain their Indians, than it will be to us to restrain ours. This greater difficulty of executing restraints on our side, is a powerful reason for us to agree, mutually, to throw open the door.

It will not be surprising, if, upon some other occasion, the adversaries of the treaty should abandon their own ground, and instead of saying the treaty is faulty, for what it stipulates on this point, should affirm, merely that it has no merit on this account, since it only does what the disposition of the Indians would have brought about without it.—But it is always a merit to divest an advantageous thing of cause of dispute, and to fix, by amicable agreement, a benefit which otherwise would be liable to litigation, opposition, and interruption.

As to relative advantages for carrying on the trade, the comparison ought to be made with caution. That which has been stated on our side, namely, greater facility in conveying the materials of the trade from Europe to the scene where it is to be carried on, is a real one, and in process of time may be expected to make itself to be felt; yet hitherto, as before observed, it has had no sensible effect.

Of the advantages which have been stated as belonging to the other side, there is but one which has substance, and this is previous possession of the ground. But even this, from the very nature of it, is temporary.—With our usual enterprise and industry, it will be astonishing if we do not speedily share the ground to the full extent of our relative advantages.

As to superiority of capital, it amounts to nothing. It has been seen, that the capital requisite for the whole trade is small. From a hundred to a hundred and fifty thousand pounds sterling would be a high statement.—The whole of this, if we were to monopolize the entire trade, could not create a moment's embarrassment to find it, in the opinion of any man who attends to the great pecuniary operations which are daily going on in our country. But that very capital which is

represented as our rival, could be brought into action for our benefit in this very trade. The solution is simple. Our credit will command it in obtaining the foreign articles, necessary for the trade, upon as good terms as the British merchants who now carry it on. The same objection of superiority of capital may with as much reason be applied to any other branch of trade between us and Great Britain. Why does it not give her a monopoly of the direct trade between her European dominions and the United States? The argument, if valid, would prove that we ought to have no commerce, not only with Great Britain, but with any nation which has more commercial capital than ourselves.

As to superior knowledge of the particular branch of business, there is still less force in that argument. It is not a case of abstruse science or complicated combination. And we are in no want of persons among us, who are experimentally acquainted with the subject.

As to customers for the proceeds of the trade, we should stand upon as good a footing as the British merchants. What we did not want for our own consumption, might be sent upon equal terms to the very markets to which they send theirs; and to others which might be found preferable, because less well supplied with the kind of articles.

As to whatever may depend on enterprise, we need not fear to be out-done by any people on earth. It may almost be said, that enterprise is our element.

It has been alleged, that our trade with the Indians would be interrupted by bad seasons and occasional wars, while that of Great Britain would be steady and uniform. As to the casualties of seasons, it is evident they must fall upon Great Britain as much as upon us, unless we suppose the elements in conspiracy against us; and as to wars, the possession of the posts would essentially change our situation, and render it peculiarly advantageous for preventing or repressing hostilities; so that with equally good management, our territories would not be more exposed than the British.

But the intrigues of the British traders residing among our Indians, would excite them to hostility. It could not be the private interest of the traders to do this; because, besides being amenable to punishment, if discovered—besides, that both the traders and the Indians within our limits, by the possession of the posts, would be under our controul—wars interrupt of course the hunting of the Indians, and so destroy their means of trading.

As to Great Britain, she never could have had but one interest to prompt Indian hostilities, that was, to induce the United States to relinquish a part of their boundary. The restitution of the posts will put an end to this project. In regard to trade, she and her traders will have a common interest with us, and our traders, to keep all the Indians at peace, for the reason assigned above. This interest will be the stronger, because the best communication even with her own Indians, will be partly through our territory; and it would be impossible that it should not be impeded and interrupted by the operations of war between us and the Indians. In fact, under the circumstance of common privileges, there is every possible link of common interest between us and Great Britain in the preservation of peace with the Indians.

In this question of danger to our peace by the British participation in the trade with our Indians, the difficulty of restraining the Indians from trading with whom they please (which is admitted by the argument of both sides) is a very material consideration. Would there not be greater hazard to our peace from the attempts of the British to participate in a trade from which we endeavoured to exclude them, seconded by the discontents of the Indians, than from any dispositions to supplant us, when allowed a free competition, when no cause of dissatisfaction was given to the Indians, and when it was certain, that war must interfere with their means of carrying on the trade? The security for our peace appears to be much greater in the latter, than in the former state of things.

A suspicion is also suggested, that Great Britain, without exciting war, will indirectly trammel and obstruct our trade. To objections which suppose a want of fair dealing in the other party, it is very difficult to answer. All that a treaty can do, is to establish principles which are likely to operate well, if well executed. It is no objection to its merits, that the benefits aimed at may be frustrated by ill faith. The utility of any compact between nations must presume a sincere execution. The reverse may disappoint the best conceived plan: and the security against it must be the mutual interest to perform, and the power of retaliation. If Great Britain acts with infidelity or chicanery towards us, we must retract the privileges granted on our side.

Another objection which is made, is, that while the British would have a right to reside among us, to hire houses and warehouses, and to enjoy every convenience for prosecuting the trade systematically, we should not be entitled to similar privileges with them, having only a right to pass "like pedlars



with our shops upon our backs." These are the expressions of CATO.

The position is founded on that clause of the British act of navigation, which forbids any but a natural born or naturalized subject to exercise the occupation of a merchant or factor, in any of the British dominions in Asia, Africa and America.

In the first place, it is to be observed, that as far as the article under discussion is singly concerned, there is no pretence to say, that one party has greater rights as to residence than the other. If, therefore, Great Britain can prevent our citizens residing in their territories in our neighbourhood, we are free by this article to apply to them a similar exclusion. And any right of residence which may be claimed under any other part of the treaty, will be temporary.

In the second place, the prohibition of residence in the act of navigation, proceeds on the ground of excluding foreigners from carrying on trade in the territories to which it extends. But the third article expressly gives us a right freely to carry on trade and commerce with the British territories on this continent, a right which necessarily includes the privilege of residing as merchants and factors. For wherever an END is granted, the *usual and proper means* of enjoying it, are implied in the grant. Residence is a usual and necessary mean of freely carrying on trade. Without it, the right to trade becomes essentially nugatory. This reasoning has peculiar force in relation to inland trade. And it agrees with decisions at common law, and with the opinion of Lord Coke, who tells us that "of an house for *habitation* an alien merchant may take a *lease for years, as incident to commerce; for without habitation he cannot merchandize or trade.*" This, among other things, he informs us, was resolved by all the judges assembled for that purpose, in the case of sir James Croft, in the reign of queen Elizabeth; and we learn from it, that the right to hire houses and warehouses is derived from the right to trade, as its incident. The same principle, *in toto*, has been recognized in other cases.

The whole of the article is an innovation upon the British act of navigation. Being abrogated as to the principal thing, there is no difficulty in supposing it so as to incidents; on the other hand, to pretend to exclude us from the right of residence, could not be deemed a fair execution of the article. Hence we find, that the want of reciprocity in this particular, also fails, and with it the supposed disadvantage on our side in the supposed competition for the trade.

CAMILLUS.

[TO BE CONTINUED.]

## R E S O L U T I O N S

*Unanimously agreed to, at a general Meeting of the Citizens of South Carolina, in Christ Church Parish, on Friday, the 24th of July, 1795, convened for the Purpose of discussing the impending Treaty of Amity, Commerce, and Navigation, between his Britannic Majesty and the United States of America.*

**R**ESOLVED, That this meeting do highly approve of the conduct of their fellow citizens in Charleston, in opposing the impending treaty between Great Britain and the United States, and do most heartily concur in the report of their committee on that subject.

Resolved, That the chairman of this meeting do transmit this proceeding to John Mathews, Esq. chairman of the meeting in Charleston.

JOSHUA TOOMER, Chairman.



## Baltimore Address.

*To the President of the United States.*

**W**E, the undersigned citizens of the United States, inhabitants of Baltimore town, beg leave respectfully to represent, that the treaty lately negotiated with Great Britain, and announced to us through the public prints, has excited in our minds the most serious apprehension and alarm for the interest and safety of our commerce, the rights of our fellow citizens, and the dignity of our government. Under these impressions, convinced as we are, of your unremitting concern for the interest and happiness of America, we think it our duty to disclose to you, freely, our sentiments on the subject, lest our silence might be interpreted into an approval of the act, and to prevent, as far as the influence of our opinions may operate, a ratification of it.

A treaty that professes to establish a firm, lasting, and inviolable peace, and sincere friendship between the contracting parties, without referring to their respective complaints, and as far as may be, removing them, wants that evidence of a paci-

sic disposition which is necessary to give it effect; and leaves room for doubts and jealousies incompatible with its object:—In this respect, the treaty with Great Britain appears essentially defective: our complaints are not redressed, nor is such effectual provision made for removing them, as might have been under every circumstance of the case; and which justice and good faith required should have been made.—Our territory and frontier posts, the subject of frequent reclamation, and held in violation of a former treaty, are to be surrendered at an unnecessarily distant period—a remote hope of recovery, after much expense and perplexity in the usual mode of legal proceedings, and much injury from the depreciation of their capitals, is the only compensation procured for our suffering merchants, who have been unjustly deprived of their property in the prosecution of a fair trade; nor has any effectual provision been made to remedy the evil or prevent future spoliations of our commerce, under like frivolous pretexts.—No restitution whatever is made or contemplated to be made, for a large amount of property, carried off from the southern states, contrary to the late treaty of peace.—Our seamen, citizens of the United States, arbitrarily and unjustly taken from our ships and detained on board British ships of war, are not restored; nor is any security contemplated against future aggressions of the same kind. Proper concessions on these points, and provisions of adequate remedy for these evils, would have been indicative of a just and friendly disposition, and ought, we conceive, to have accompanied the act of ratification.

But we have other objections to the treaty. It contemplates an inconsistent establishment or colony of men within the territory and jurisdiction of the United States, enjoying some of the most important privileges of citizens, but exempt from the burdens, and owing no allegiance to its government. Many mischiefs, we conceive, might result from such an establishment; among which, from the evident want of reciprocity, in the advantages of navigation ceded in the lakes, and other western waters, may justly be apprehended, the monopoly of a lucrative fur trade, by this description of settlers. From the admission of British ships to be the carriers of our bulky products, on terms of perfect equality with our own, we anticipate a material loss in the value of our shipping; and consequently, a great injury to a numerous class of people employed in ship-building, and in the manufacture of cordage, iron, and other articles, necessary to this extensive branch of business; and we fear what is contemplated as an equivalent for this important sacrifice, will not be found such in fact.

We cannot view but with the most lively concern and regret, that article of the treaty, which authorizes the seizure of enemies' property in neutral ships. This is a cession of vast importance to America as a trading nation. Situate as she is, remote from the powers of Europe; pacific in the temper and disposition of her citizens, and in the principles of her government; she is not likely to be embroiled in wars. The advantages, then, that would result from her being the carrier of property for the contending nations, are too evident to require elucidation, and too important to be given up without an equivalent. The principle of free ships making free goods has been formally acknowledged by the government of the United States to other neutral powers, when she was engaged in war—It has been granted to her by treaties with different nations: it has long been contended for, and has been acknowledged by several of the respectable powers of Europe. By giving up this point, to a nation so frequently engaged in wars, we give our consent to the most vexatious and injurious restrictions on our commerce, and of our national rights as a neutral nation, without any thing that can be called an equivalent.

America is not in a condition, to benefit by the apparent reciprocity in this article of the treaty; nor likely soon to be in a situation that will require it.

We have doubts of the policy, on our part, of agreeing to that article which precludes the United States from entering into treaties, inconsistent with some of its provisions, whereby America would be prevented from a renewal of her beneficial treaties, existing with the French Republic, and other European powers; and from making such other treaties at any future period, as may be deemed advisable.

To enumerate minutely, the many evils which may be apprehended from a treaty, so partial and unequal in its provisions, and wherein many of our just complaints are entirely unnoticed, would be unnecessarily trespassing on your time; and to point out defects which we are persuaded will not have escaped your notice. We, therefore, content ourselves with the observations we have already made; adding only, that we retain the most grateful remembrance of your steady, enlightened patriotism, which has saved our republic from impending ruin, on many memorable occasions; and that we look to you as our only hope of deliverance from the evils we anticipate in an adoption of the proposed treaty; earnestly entreating you to withhold the sanction of your name, from a compact evidently so unjust, and so derogatory to the interest and dignity of America.

## Morris County Proceedings.

*Resolutions, Petition and Remonstrance of the Inhabitants of Morris County, (New Jersey) respecting the pending Treaty between the United States and Great Britain.*

ON August 5th, 1795, a respectable number of people, from various parts of the county, met together in Morris Town, by previous notice, for the purpose of considering whether it would not be expedient to call a general meeting of the county, in order to deliberate upon the treaty of commerce, &c. pending between the United States and Great Britain, and to take the sense of the people, then assembled, on said treaty.

The treaty was read, a number of forcible objections were made to it, and it was agreed, *one voice dissenting*, that a general meeting of the county should be called on Saturday the 15th instant. A committee of nine was appointed, and requested to draw up such address to the president of the United States, as would be most suitable to the occasion, to be presented at the ensuing meeting, for the approbation of the people. The moderator and clerk were requested to give notice of said meeting by advertisements in the county, and in the Newark and Elizabeth Town papers.

Agreeably to the aforesaid notice, on August 15th, the people assembled at the court house of the county, and proceeded to elect a moderator and clerk; the treaty was read and considered—objections were stated, and no reply was made in contradiction to them: the committee then handed forward their report, which was read and considered, and is as follows.—

The committee previously appointed for taking into consideration the treaty of commerce, &c. between the United States and Great Britain, as agreed to by their respective ministers, report the following resolutions as proper to be adopted on the present occasion.—

Resolved, That it is the duty of the citizens of these States to watch with a jealous eye, and carefully to guard against every attempt to destroy and infringe the rights, liberties, and privileges of the good people of this country, which they have recently obtained at the expense of so much blood and treasure; whether such attempt to wrest them from us, be by an open and avowed act of violence, or by the insidious arts of our enemies, or by the corrupted or misguided judgment of confidential or professed friends.

Resolved, That, in discharge of this duty, and in the exercise of the privilege of freemen and friends to the liberties of our country, the moderator of this meeting do, in the name and behalf of the people of this county, at their county meeting assembled, as soon as possible, subscribe, and transmit to the president of the United States, the substance of the following remonstrance and petition.

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*To the President of the United States of America.*

The Petition and Remonstrance of the Inhabitants of the  
County of Morris, in New Jersey,

*Sheweth—*

**T**HAT your petitioners having maturely considered the treaty of amity, navigation, and commerce, proposed to be established between these United States and Great Britain, do humbly conceive the same is not founded on those principles of equal justice and reciprocity, that ought to be the basis of all national contracts, and which alone can lay a lasting and permanent foundation for mutual satisfaction and peace between the two countries.

We apprehend it would be an unnecessary intrusion on the time and patience of the president, to enumerate and state, particularly, all the objections that occur in reading and considering this extraordinary diplomatic instrument, especially as the most of them have been designated, and as we are informed, been already presented to the president from various parts of the continent.

We cannot, however, but observe in general, that the argument urged by the advocates of the treaty appears to us unfounded, viz, That the unequal concessions and sacrifices made therein by America to Great Britain, are the necessary price of peace with her. If this position were true, it remains a doubt whether the price would not far exceed the purchase. We would farther observe, that on the ratification of this treaty, we have no other security for the delivery of the western posts in June, 1796, than we had for the evacuation of them with *all convenient speed*, as stipulated in the treaty of peace of 1783. But suppose they were actually given up, agreeable to treaty, what do we obtain thereby but the privilege, if it may be called one, of keeping garrisons there at our own expense; whilst, by the agreement, the British have the entire

monopoly of the fur trade, and that through our territory; with this singular advantage of keeping a colony of British subjects within our jurisdiction, not bearing allegiance to our government, which, to our frontier settlement, may be of more serious consequences than at first view is apprehended; and who can say that an insurrection like the one lately suppressed in Pennsylvania, among such privileged subjects of Great Britain, would not terminate in an open rupture with their sovereign? Nor do we conceive, that we shall by this treaty be more secure in our commerce than neutral vessels were by the law of nations under the recognition of our independence; nor can we extend our credulity in the faith of that nation so far, as to suppose that our naval commerce will be less abridged by them, or our seamen less exposed to insult than heretofore, unless we wholly relinquish all trade with her enemies and all others, where it may interfere with her interest. But we ought to remember, that *the nation which will suffer her honor to be insulted, or her natural rights to be invaded with impunity, will not long have either the one or the other to lose.*

If the horrors of war, which we sincerely deprecate, are to be set in competition with the loss of our natural rights and privileges, we are not able to distinguish the advantages to be derived from a treaty which submits them, rather than to have them taken from us without. The latter seems to us preferable; as in that case, whenever we thought fit and proper, and circumstances were favorable, we might assert our right without being stared in the face by a treaty that had previously resigned them. Besides, stipulations so manifestly unjust and unequal (though the temper and circumstances of the moment may procure a ratification) will not fail to be a continued source of dissatisfaction and complaint, and produce mutual infractions of the treaty, and most probably will accelerate rather than retard hostilities between the contracting parties.

From our present view of this subject, and with a sincere desire to serve and promote the best interest of our country, in full confidence that the president of the United States will exercise that prudence and precaution with which his command and exalted administration has ever been distinguished, we intreat that he will *at least* suspend the final ratification of the said treaty with Great Britain, until the people of the United States shall assemble in congress by their representatives, and by them be advised on a matter so interesting and important.

No objections being offered against the above report, it was Unanimously resolved, That the people do approve of said report, and enjoin it upon the moderator of this meeting to

perform the resolution, therein contained, of having the same speedily conveyed to the president of the United States.

It was then moved and

Resolved, without a dissenting voice, as the sense of the meeting, That the gratitude and applause of the people of the United States are justly due to those members of the senate who voted against the ratification of the said treaty, and also, that the particular thanks of this meeting are hereby acknowledged to S. T. Mason, one of the senators from Virginia, who first publicly disclosed the aforesaid act, which is pregnant with consequences the most interesting to every class of citizens of this country.

By order of the Meeting,

ALEX. CARMICHAEL, Moderator.

WILLIAM CAMPFIELD, Clerk.



## Remarks on the VIIth Article of Mr. Jay's Treaty.

*Extract of a Letter from Virginia, dated August 14, to a Gentleman in the City of Philadelphia.*

**E**VERY time I read the treaty, new objections occur, or old ones penetrate deeper into the subject. Did you ever observe the effect of the latter clause of the 7th article, as it asserts a claim on the part of the United States against France for whatever shall be paid under it to Great Britain? In Mr. Jefferson's letter to Mr. Genet, he says "Unless vessels captured as the 7th article states, shall be restored, if the United States make compensation for them, they will consider the sums paid as authorizing a claim on the part of the United States against France." It is remembered, that Genet asserted a right on the part of France, to arm privateers in our ports, under the French treaty. This dispute has never been adjusted between the United States and France; when then the treaty surrenders to Great Britain an equivalent for the captures made by French vessels, in order to charge France with the amount of that equivalent, not to apprise our friend and ally, that such a circumstance was meditated before it was agreed to, is an unjust procedure towards France, and tends to involve us in a disagreeable altercation with that nation.



## Proceedings at Trenton.

*Trenton, August 20th, 1795.*

**A**S various misrepresentations have already been made respecting the vote taken at the town meeting, held at the state-house in Trenton, on Thursday the 13th inst. and though the account thereof [See page 128.] so far as it goes, contains the truth; yet not the whole truth, it is deemed proper to publish the following as a true and incontrovertible statement of the proceedings which took place with regard to the resolution adopted at the meeting.—

At a numerous and respectable meeting of the citizens of Trenton and its vicinity, assembled on the 13th August, at the state-house,

Aaron Woodruff in the chair,

General Frederick Frelinghuysen, one of the senators of this state in the congress of the United States, attended, and, at the request of the citizens present, consented to give his sentiments on the treaty pending between the United States and Great Britain.

The following resolution was then moved by the Rev. Mr. Armstrong, and seconded by Mr. Craft.

“Resolved, That this meeting have the fullest confidence in the honor, virtue and integrity of the said Frederick Frelinghuysen—that this meeting are fully of opinion, that in voting for said treaty, he acted on the purest principle of patriotism; and that the thanks of this meeting be given to him, for the candor with which he has stated the reasons which induced him to vote for the said treaty.”

This resolution was objected to by Mr. Mott and Mr. Throckmorton, upon the principle, that it might be deemed by the public as an implied contradiction to the vote of the former town meetings, disapproving of the said treaty—which contradiction it was evident this meeting did not mean to make; that all that was intended, was to acquit Gen. Frelinghuysen of the implication (which, it was conceived, had been conveyed by the resolution of the former town meeting) of a want of independence, integrity, and patriotism; and so far, and no farther, was this meeting willing to go.

It was answered by Mr. R. Stockton, that nothing more was meant or intended; and that, from a view of the resolution, it could not possibly be taken to be a contradiction of the vote of the former meetings, in disapprobation of the treaty.—

Mr. Craft, in particular, declared, that if he could imagine that it could be construed in any manner to contradict the vote of the former meeting, he should hardly have been so inconsistent with himself as to have seconded the motion; and that he would still vote against it with all his heart; for that Gen. Frelinghuysen had not convinced him that he was wrong; and he believed that every person present remained of his former opinion—but he did not think the resolution carried the implication held up—it went no further than to acquit the General of an imputation (which nobody ever meant to make) that he had voted for the treaty under an undue or improper influence.

In reply, it was observed, that if nothing more was intended, there could be no reason against stating the resolution in such terms as to avoid all doubt about the meaning.

But it was insisted on by Mr. R. Stockton, and several others, that the question should be put upon the resolution as it stood:

The question was accordingly put by the chairman, and *lost by a very large majority.*

Whereupon it was moved by Mr. Throckmorton, and seconded by Mr. Craft, that the resolution be amended so as to read as follows, viz.

Resolved (*without reference to the merits of the said treaty*) that this meeting have the fullest confidence in the honor, virtue and integrity of the said Frederick Frelinghuysen—that this meeting are fully of opinion that in voting for the said treaty, he was actuated by the purest principles of patriotism, and that the thanks of this meeting be given to him, for the candor with which he has stated the reasons which induced him to vote for the said treaty.

And the question being put upon the resolution, as amended, it was agreed to.

After this statement of facts (which no person of candor can contradict) the public are left to judge of the truth of the representations which have been made, with regard to the proceedings of the meeting; and what would have become of the only vote that the friends of the treaty thought proper to attempt, had it not been for the conciliating disposition manifestly discovered by two or three of the very persons most strenuously opposed to the treaty, of which description of persons, it is believed, there was a majority of four to one.

*Trenton, August 20.*

**W**HEREAS at a general town-meeting of the citizens of Trenton and its vicinity, convened at the state-house, on Wednesday the 29th July, 1795, pursuant to public notice given, "for the purpose of taking into consideration measures proper to be pursued upon the subject of the pending treaty between Great Britain and the United States," it was, among other things, unanimously resolved, "That it is the constitutional right and patriotic duty of the citizens of the United States, to express, on every important occasion, the public sense of public measures." It was further resolved (without a dissenting voice), "that it is at this time, in a peculiar manner, the bounden duty of every friend to his country, to express the public opinion upon an instrument, so extraordinary and momentous in its nature as the treaty of amity, navigation and commerce, lately projected between lord Grenville, on the part of Great Britain, and John Jay, envoy extraordinary, on the part of the United States;—degrading to the national honor—dangerous to the public interest—and destructive of the agricultural and commercial views of the United States."—It was further resolved (without a dissenting voice) "That the citizens of Trenton and its vicinity, having heard a full discussion upon the subject of the treaty, do, upon the most cool and dispassionate consideration, disapprove of the said treaty, and hope, by this public expression of their sentiments, to prevent, as far as possible, its ratification by our Supreme Executive." And whereas a publication has appeared in the New Jersey State Gazette of last Tuesday,\* insinuating to the world, that the said resolutions were not adopted at a general town-meeting; and testifying, that the subscribers to the said publication "did not concur in, and did not approve of, the said resolutions; and declaring their entire satisfaction and confidence in the constituted authorities, and their determination to acquiesce in such measures as have been, or might be finally adopted, relative to the said treaty, by such constituted authorities," thereby casting a necessary implication, that those persons who attended the said town-meeting, and concurred in the said resolutions, would not submit to such measures of government as might be finally adopted, with regard to the said treaty.

NOW, WE, the subscribers, citizens of Trenton and its vicinity, while we lament that, on an occasion of this nature, means should have been taken to prevail on ungarded individuals to unite in that public testimonial, contrary to their

\* See page 127

known sentiments—DO, in this public manner, declare and make known to the world, that we conceive it to be a right established and confirmed to us by the constitution, peaceably to assemble together and make a public expression of our sentiments on all public measures; a right which ought to be relinquished by freemen, only with their lives. And, WE DO ALSO thus publicly testify and declare our concurrence in, and entire approbation of the said resolutions of the general town meeting of the citizens of Trenton and its vicinity, herein before stated, with regard to the pending treaty: But while we are making this public declaration of our sentiments, as well with regard to our interest and constitutional rights, as with regard to the said treaty, we do in the same manner declare to the world, as we have heretofore uniformly done, that we shall consider it our duty, and the duty of every good citizen and friend to his country, to acquiesce in such constitutional measures as may be finally adopted, by our representatives, not only with regard to the present treaty, but all other the acts and doings of government.

Moore Furman  
James Mott  
Joseph Milnor  
Joseph Brearly  
Randle Rickey  
Gershom Craft  
J. W. Vancleve  
Smith Hill  
Ellett Howell  
John Potts  
Jeremiah Woolsey  
J. Bellenjean  
George Henry  
Joseph Butler  
Nathan Wright  
Joseph Brumley  
David Snowden  
Henry Drake  
Joseph Disbrow  
Edward Baker  
Barzilla Braman  
Joseph Cowell  
James South  
Peter Brown  
Obadiah Howell, junior  
Jonathan Cook  
Robert Beatty  
John Parks  
Joseph Wiggins  
Edward Byrne  
John Munroe  
David Margerum  
Benjamin Hibbs

Abraham Hay  
J. Sumption  
John Hay  
Thomas Hail  
Zebulon Chambers  
Frederick Long  
John Crone  
James James  
Jacob Herbert  
John D. Pinkerton  
George Jobs  
William Barber  
Anthony Cook  
William S. Moore  
David Taylor  
Paul Haughey  
John Hughes  
George Miller, junior  
John Deppold  
Jos. Davis  
John Tucker  
William Gran  
R. W. Furman  
John Morton  
Benjamin Laurence  
James Kirkpatrick  
Joseph Palmer  
James Hankinson  
Israel Hart  
Nicholas Rednor  
Jos. McCreight  
Nicholas Dubois  
John James

Benjamin Vancleve  
Joseph L. Bascom  
Richard Throckmorton  
Thomas Atkinson  
Jonathan Bryant  
William Tindall  
Joseph Morgan  
John Rozell, junior  
Aaron Howell  
Samuel Taylor  
E. H. Gordon  
Edmund Burk  
John McCallum  
Eliza Cook  
Ezekiel Howell  
Jesse Roscow  
Lewis Morford  
Mildred Priest  
Richard Hankins  
David Wrighter  
Job Moore  
Ephraim T. Silver  
Robert Alexander  
John Cox  
John Brown  
Robert Russell  
Ephraim Howell  
Amos Howell  
Francis Clacker  
Robert Hosier  
Robert McNeely  
Lewis Evans  
Timothy Titus

David Rhea	Phillip McLaughlin	Andrew Titus
Aaron Dollas	Abraham Voorheis	George Simmins
Asher Coalman	Robert Fleming	Jacob Hife
Daniel Carpenter	Robert Shaw	Richard Hudnut
Robert Chapman	Barnit Hagaman	Andrew Hoff
Peter Merfion	James Matthis, junior	Cornelius Hoff
Emanuel Coryell, junior	Wilson Appleton	John Marshall
George Ely	Thomas Britton	Andrew Smith
Matthias Day	Richard Brown	Amos Hart
John Wiggins	Miles Donavan	Job Phillips
William Douglass	Alexander McCloud	Albermarle Collins
John Morris	John Clunn, junior	Septimus Evans
Michael Bettenger, junior	John Howell	Joseph Gee
William Potts	Samuel Beakes	Enoch Anderson
John Moody	Samuel Titus	Jeremiah Buzhart
Joseph Jenkins, junior	John Drake, senior	Lott Howell
John Sutterly	John Vancleve (major)	James Hooper
Thomas Scott	Jos. Moor	Robert Mannington
Thomas Yard	Timothy Hart	Edmund Conner
James Phillips	Patrick Dougherty	Robert Reves
George Beatty	Rynier Quick	James Thompson
Ralph Hart	Alexander Smith	John Phillips
John Sanderland	Thomas Claridge	John Stephens
Asher Hart	Jethro Yard	Job Rozell
Ralph Hart, junior	John Coleman	Job Cook
Asher Temple	Stephen Fricker	Aaron Cook
Benjamin Hart, junior	Phineas Atkinson	Samuel Coalman
Joseph Mathes	John Felter	David Hutchinson
Isaac Morford	Josiah Ferrers	Jonathan Hutchinson
James Bowen	Thomas Clarke	Samuel Moore
Jesse Burrows	Joseph Moore	James Rogers
John Waters	Peter Nevius, junior	Hezekiah Smith
Benjamin Yard	Nathaniel Temple	Peter Frankford
John Dean	Benjamin Hendrickson	Ellett Tucker
William Cannon	Elijah Hendrickson	James Saltar
John Campbell	Jacob Dean	Samuel Pinkerton
John Yard	Benja. Hendrickson, jun.	Micajah Hart
Henry Hany	Samuel Lanning	Jacob Wycoff
John Keenes	Joseph Lanning	Isaac Brearly
David Waters	Israel Hendrickson	George C. Maxwell
John Taylor	Jacob Hendrickson	John Vandegrift
Joab Merfion	Henry Drake (capt.)	John Morris, junior
Francis Witt	Andrew Stout	Henry Jones
Israel Hunt	John Hunt	Zepheniah Plummer
Isaiah Smith	Ralph Hunt	Cooper Atkinson
Samuel Cook	Augustine Moore	Michael Becknall
Richard Hudnut	Foster Hart	John Carpenter
Joseph Tindall	Benjamin Merrill	Richard Hunt
John Paradise	William Merrill	David Dye
Samuel Cornell	Richard Tobin	John Bell
John Campbell	Henry Reed	Robert Fagans
John Maxwell	Jonathan Muirhead	John Cubberly
James Conlon	Joseph McCully	William Foore
John Lawrence	Nathaniel Burroughs	John Appleton
John Hunt, junior	Thomas Wiggins	John Willigus
Robert Updike	Aaron Hart	Thomas Butcher
John Clunn	Charles Willing	David Cubberly
Thomas Ashmore	Charles Hoff	Alexander Nelson

Abel Appleton  
Robert Nelson  
John Walton  
Ezra Taylor  
Andrew Bowne  
Jacob Minton  
John Phares  
William Napton  
Amos Hutchinson  
Jacob Stelle  
Obadiah Eldridge  
Samuel Stout  
George Britton  
Elijah Applegate

Isaac Tindall  
Robert Carlon  
Gilbert Covenhoven  
Robert Phares  
William Appleton  
Matthias Musgrove  
Robert Cunningham  
Richard Bainbridge  
George Smith  
Barnt De Klyn  
George Anderson  
George Anderson, junior  
Jabez Ashmore, junior  
Daniel Denny

Daniel Hartupe  
Ely Anderson  
Noah Howell  
Benjamin Jones  
Nathaniel Moore  
Jabez Ashmore  
John Pinkerton  
Cornelius Bowne  
William Walton  
William Erwine  
Andrew Rowan  
Humphrey Fagan  
Ephraim Welsh



## R E S O L U T I O N S

*Adopted at a numerous and respectable Meeting of the Citizens of Powhatan, at their Court-House, on Tuesday the 21st Day of July, 1795, for the Purpose of taking into Consideration certain Proceedings of Gentlemen of Neighbouring Counties, assembled at our Court-House, on Saturday, the 4th Instant, in consequence of the Troop of Horse belonging to the Brigade being ordered to assemble there :—*

**I**T is represented to us, that on the aforesaid meeting, certain illiberal and unmerited censures were exhibited, in a public and formal manner, by a man not of the county, a mere stranger, against certain officers of the federal government, but in a particular and pointed manner against the president of the United States; in order, therefore, to express our dissent and disapprobation, and moreover to disclaim all political connection with men of the foregoing description, and to avert that odium that must necessarily result from an acquiescence to such measures—We have assembled, and do

**RESOLVE**—That, In the name of the county, we pointedly and unequivocally disavow such sentiments, in as much as they tend to the destruction of that confidence which every good citizen ought to have in government, and to the alienation of their affections from the officers thereof, who, particularly the president, will continue to share our warmest affections, so long as the prosperous situation of government evinces the wisdom of their deliberations.

That, Every attempt to alienate the affections of the people from the officers of government, is an open violation of good

order, and cannot be justified by any, whose situation and circumstances in life, would make it their interest to prefer order and government to anarchy and confusion.

That, We cannot help expressing our astonishment at the want of delicacy in gentlemen attempting to sow the seeds of anarchy in a country where they are not inhabitants, among people too, who are as remarkable for their attachment to order and good government, as for their abhorrence to every measure calculated for its destruction.

That, The spirit for disorganization, which at present so strongly features the turbulent, has united, and deserves the united disapprobation of, all good patriots.

That the president, though neither unerring in his judgment nor omnipotent in his execution; for his firmness, virtue, and wisdom, which calculate him for the meridian of a republic—deserves our esteem, regard, and warmest applauses; and whilst we disdain to adore him as a Deity, with equal reluctance would we withhold his tribute, and wish to canonize him as the father of his country.

That, It is the firm and unbiassed opinion of this assembly, that the president never has, by mal-administration, or misrule in government, incurred a forfeiture of the esteem and affections of his fellow citizens; but, on the contrary, that his public and private life are both superior to stricture.

That, It is the sense of this meeting, that the character of the president, cannot be aided by eulogies, but only requires for its support, investigation.

On a motion being made and seconded,

Resolved, That the proceedings of this day be published.

BRETT RANDOLPH, Chairman.  
JOSIAH SMITH, Secretary.



## P R O T E S T.

**B**EFORE the notary in the jurisdiction of Jeremie, there dwelling in the parish of St. Louis, island of St. Domingo, in the West Indies, under-written in presence of the witnesses hereafter named, who have signed the same—

Was present in person, Mr. Samuel Osborne, captain of the sloop Friendship, of New York, at anchor in this road this fortnight, and on his departure and return; assisted by Mr. Thomas Praderes, interpreter of the English language in this

town, whose requisite oath we have provided ourselves with; who told us,

That, at half past two o'clock in the afternoon of this day, the boat of the ship *Regulus*, at anchor this morning in this road, came on board of his vessel, commanded by an officer of the said ship, and took out of the said vessel the following men;

David Murcie,	master;
Thomas Dick,	negro man;
William Bennet,	negro man;
Thomas Danny,	negro man.

That he has no more on board of his vessel than the cook and a lame sailor.

That this exaction becomes so much the more disadvantageous to him, as he has no more men; and that the approaching season, subject to violent storms, exposes his vessel to the greatest dangers.

That he does not suppose that this exaction may be authorized; and that in all cases, for the security of his owners, and all those whom it may concern, and for any cause that may arise by reason whereof, he is desirous of making this his authentic declaration.

Wherefore, as much in his name individually, as in the name of his owners. Messrs. C. C. Weltphal and Co. and of all others whom it may concern, he makes here all protestations resulting, and which may result from the exaction which has been committed on board of his vessel on those white and black sailors, and still from all losses, charges, damages, and interests which he bears and may bear; intending to sue Thomas Oakes, captain of the said ship, and any one it may concern; besides reserving to himself all his rights, reasons, actions, and pretensions, in order that they may be made use of when proper, and in the manner specified by the laws and ordinances which may relate to this matter, and especially in case the sloop should be lost.

This present declaration being read, and explained by the interpreter to the captain, he has acknowledged it to be true and sincere; so the interpreter told us.

Done and transacted at Jeremie, in our office, the year of our Lord one thousand seven hundred and ninety-five, and the fourteenth of July, at four o'clock, P. M. in presence of De-lassaux and Chinon, merchants, living in this town, known and requisite witnesses.



The parties have signed with us, notary, after a second perusal and explanation of this present declaration.

SAMUEL OSBORNE,  
PRADERES,  
DE LASSAUX,  
CHINON,

LEPINE, Notary.



*Newport, August 2, 1795.*

SIR,

THE following is a copy of a letter I received from Captain Home, of his Britannic Majesty's ship *Africa*, which I take the most early opportunity of forwarding to your Excellency, having the honor to be, with due respect and esteem,

Your Excellency's most obedient,  
and very humble servant,

THOMAS W. MOORE.

His Excellency Arthur Fenner, Esquire, Governor and  
Commander in Chief of the State of Rhode Island.

*Africa, off Rhode Island,  
31st July, 1795.*

SIR,

I DID expect to have the pleasure of seeing you on board the *Africa*; but as that is not the case, I am obliged to send an officer to you, under the present circumstances, and to desire that you will lay my letter before the governor, or other chief magistrate of the island, which is to contain these several requests:—

First, that there may be delivered up to me, immediately, an officer who was taken on board a British sloop, while in Newport, and confined on board the French frigate now in Rhode Island; these violent proceedings being contrary to the law of all nations in a neutral port.

In the second place, that you may receive the aid of the civil power in this island, to send on board the *Africa* all Bri-

tish or others, who have been captured in any vessels, and set at liberty in these states; not a feigned and pretended aid, but such as our nation has a right to expect from the United States: And 3dly,

That I may be permitted to buy such refreshments as my ship's company are in need of; and that in case I send my own boats on shore, my people and officers shall not be liable to insults from any of the inhabitants, or others, of whatever description; and to represent in plain terms to the governor, that *if my officer who carries this letter, or any other officer or people whom I may send upon these just and lawful occasions, receive from any one individual, whether of the nature of a mob or otherwise, any affront or insult, I WILL IMMEDIATELY COME IN WITH HIS MAJESTY'S SHIP UNDER MY COMMAND, AND PROTECT MY OWN PEOPLE:* and further, that if the government or states here, are, in such cases as I have mentioned, guilty of such a breach of neutrality, I will then look upon myself in the same manner, as not bound to observe the neutrality of these ports; and *I am resolved to be treated in the same manner in all respects, whatever, as they do those of the French Republic.*

And I am the more plain in the nature of my present demands, as I have received a hint, that if I send my people on shore, while the Medusa lies at Newport, that they will be considered as spies. In this case I want to spy nothing; I am in full possession of every intelligence regarding that ship, which I want to be possessed of.

And I require a written answer from the governor of Rhode Island to these demands, and that, without loss of time.

I am, &c.

R. HOME.

Thomas Wm. Moore, Esquire, his Britannic Majesty's  
Vice-Consul at Rhode Island.

[No. IV.]

T H E

American Remembrancer;

O R,

AN IMPARTIAL COLLECTION

O F

ESSAYS, RESOLVES,

SPEECHES, &c.

RELATIVE, OR HAVING AFFINITY, TO THE

TREATY WITH GREAT BRITAIN.

---

*P H I L A D E L P H I A :*

PRINTED BY HENRY TUCKNISS,  
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—OCTOBER 1, 1795.—

# C O N T E N T S.

	Page
1. <i>CATO</i> , No. VIII.       -       -       -	219
2. —————No. IX.       -       -       -	223
3. —————No. X.       -       -       -	229
4. —————No. XI.       -       -       -	234
5. —————No. XII.       -       -       -	239
6. —————No. XIII.       -       -       -	244
7. <i>Camillus</i> , No. XII.       -       -       -	253
8. —————No. XIII.       -       -       -	263
9. —————No. XIV.       -       -       -	269
10. —————No. XV.       -       -       -	278
11. <i>Governor Fenner's Reply to the British Vice Consul's Note enclosing Captain Home's Letter</i> -	287
12. <i>President's Revocation of the British Vice Consul's Authority</i> -       -       -	288

## Observations on Mr. Jay's Treaty.

[CONTINUED FROM PAGE 174.]

### No. VIII.

THE article relative to the trade of India, is in itself of too little moment to require much of our attention. The fact, with respect to that trade, is, that as the merchandizes carried to India consist of commodities which the European nations cannot conveniently supply, together with money and necessaries for refitting their ships: As the proceeds of these cargoes are employed in purchasing India goods from the factors of the European nation at whole port we trade, there is a clear profit in admitting us freely to their ports, and thereby rendering such ports the entrepots between the United States and India. Should one nation only do this, and the others exclude us, the one that admitted our vessels, would thereby acquire a double profit; first, upon the India goods sold to us; second, upon the sale of the commodities we brought them. This is so well understood by all the European nations that have establishments in India, that our vessels are freely admitted into their ports (a very few excepted, that have a monopoly of a particular commodity) and France has put our trade with hers upon the most favorable footing. The restrictions in the treaty have thus *narrowed*, instead of *enlarging*, our advantages in trading to the British factories; but as all the others are open to us, she will be compelled to receive us or lose our commerce; and as her ports afford no peculiar advantage, neither the one nor the other merits our attention: the article, as far as it goes, is not good; but one can hardly call it bad, when connected with the rest of the treaty; the deficiency of grace in a single feature does not attract our notice, when the whole face is strikingly deformed.

I proceed now to examine the effect of the treaty upon the commerce of this country when Britain shall be at war. It will be admitted, that the nature of our government, and our situation, remote from the politics and interests of ambitious powers in Europe, will enable us for the most part to live in peace. It will also be admitted, that a maritime nation that cultivates peace, may add greatly to her commerce and navigation, if

she can carry on her trade with the belligerent powers, while theirs is diminished by the conflict. In order to do this, it is essentially necessary, that she should be able to make the powers at war respect her flag, and the rights of neutrality.

With this view, therefore, commercial nations have always endeavored by treaty, to protect their commerce from the interruptions which the principles of the old law of nations (now indeed sufficiently exploded) afforded either of the belligerent powers a pretence to interpose. In looking back thro' the treaties which the nations of Europe have for one hundred and fifty years past formed, with a view to this object, we find principles laid down and established by them, in these respects totally different from the rules which the writers on the law of nations, borrowing their maxims from barbarous ages, have recorded. For it should be remembered, that the law of nations is no written code, but a collection of those principles which govern the conduct of civilized nations, with respect to each other; which principles can only be collected from their practice, and the theory established by their treaties; and as the laws of a community are calculated to promote the interest of the members of that community, and are repealed or go into disuse when they are found not to answer this purpose, so the laws of nations also change with their refinements and civilization. If, therefore, a man were to look into the laws of any ancient state, he would find many things that would appear to him absurd, and contrary to humanity, which still maintained their place in the statute book. Thus in England, he would find the trial by Battle Laws against Witchcraft, and a variety of ridiculous local customs, which would greatly shock his feelings, until he was told that all this trash had gone into disuse, though the laws were never formally repealed.

So, in looking into the writings upon the laws of nations, he would find attempts upon the common rights of humanity, upon the independence of neutral nations, justified by the maxims of writers, who, for the most part, are pedants that reverence antiquity, and make no allowance for the change that the increased commerce and intercourse of nations have occasioned. Thus Vattel, to justify the capture of vessels going to a blockaded port, tells us, that Demetrius, about two thousand years ago, hung the pilot and mariners of a vessel that carried provisions to Athens, which he had blockaded. The writers on the laws of nations in Algiers, could justify their practice by more recent and valid precedents. But when we look into the practice of nations, we find that their sentiments, expressed in all their treaties, for a series of years, have refuted

these opinions, and established a code more consonant to reason and humanity. To strengthen those laws, is peculiarly the duty, and interest of a nation, that will probably be seldom engaged in a war, and always deeply interested in the freedom of commerce and navigation. As far back, therefore, as the year 1630, and ever since, I find the commercial nations declaring by treaty, what shall be considered as contraband, and limiting this strictly to arms and ammunition, and instruments of war, actually made up for that purpose; stipulating that free ships shall make free goods—declaring that full credit shall be given to ship's papers; that armed vessels shall not come within cannon shot of a neutral ship, but send their boat on board, with only three men at most, to examine papers, but not search.—In short, the treaties for one hundred and forty years back, relative to this object, are drawn in the *very words* of the treaty between the United States and France; as they are again repeated in the late treaty between England and France. For this striking similarity I refer to the treaty between Spain and the United Provinces, in 1650, and to a long series of conventions between various nations since; in which I can safely declare, I have not yet, after the most diligent search, found a single treaty in which the same latitude is given to the word *contraband*, as Mr. Jay has given it in his treaty with Lord Grenville: nor have I met with one, though such possibly may exist, in which no provision is made to guard the neutral ship from search and spoliation.

The twenty-second article of the treaty between Great Britain and France, confines the word, contraband, to arms, ammunition, and military stores; and the twenty-third article expressly excludes cordage, sails, tar, rosin, pitch, masts for ships, plank, timber of all kinds, and all other things proper for either building or repairing ships.

The same principles are followed in our treaty with France, Holland and Sweden, and the same, as I have stated, are to be found in treaties near one hundred and fifty years back; so that notwithstanding a loose expression in Vattel, relative to naval stores, we may consider it as now settled by the uniform acknowledgment of nations, as expressed in their treaties, that contraband must, in its nature, be confined to arms and military stores. But were it otherwise, as the object of every treaty is to gain some advantage which you did not before enjoy by the laws of nations, or to remove some doubt which might be entertained on those laws; no nation ever enters into a treaty in order to enforce an established law, unless that law is beneficial to it. What then could Mr. Jay's inducement be, after we had

obtained from France, Holland and Sweden, express stipulations exempting naval stores, &c. from the list of contraband—After three great nations of Europe had, by their treaties, and by their formal accession to the principles of the armed neutrality, declared that these articles were *not* contraband—after Britain had at length made the same recognition by her treaty with France—after the president of the United States had expressly, in his proclamation, referred to the *modern law* of nations for the meaning of the word contraband, and in his enumeration of contraband articles, had excepted all those that are excepted in our treaty with France—I say, what could be Mr. Jay's inducement to declare, in the 18th article of his treaty, the following staple commodities of this country contraband—“Also timber for ship-building, tar or resin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly for the equipment of vessels, unwrought iron and fir planks only excepted?” Is there any reciprocity in this stipulation? Was it probable that the United States would soon be at war with any nation, to whom Britain would carry these commodities? Was not Britain already at war with a nation who furnishes us a good market for them? Are they not staples of our country, which we have a very considerable interest in shipping? What equivalent does the treaty hold out to us for relinquishing this important branch of commerce? Is it usual for nations to compliment away their commerce without any equivalent? Will Mr. Jay assert, that these were contraband by the *modern law* of nations? Will he give the lie to the president's public declaration, that they were not? Or is common politeness too much for our own executive, while the most servile adulation is lavished on the monarch of Britain? But supposing that they were actually contraband, had we not a right to expect that Britain would agree to their exemption from that character in her treaty with us, as she had done in her treaty with her natural enemy—and as France, and every other nation with whom we have treaties, had done with us when we were in a much less important state, than we are at present? Do not the common principles of humanity, and the interests of all commercial nations, combine in striving to narrow the evils of war, and lessen its effects on neutral nations? The venerable Franklin, with this view, inserted in his treaty with Sweden, a stipulation for an uninterrupted commerce in private ships, even if the contracting parties were at war with each other; but the chief justice of the United States thinks it his duty to stop the progress of civilization, and to recall the barbarism of past ages, even at the expense of the dearest interests of his country. What



answer, sir, would you make to this venerable sage, if he was to rise from his grave, and to charge you with sacrificing the interests, with tarnishing the honor, of your country? If he was to allege, that you had, in this article, violated the rights of nations, and done all in your power to re-plunge us into that state of barbarism from which we had so happily emerged? What answer, sir, would you make? Would you borrow the words of Macbeth? “Thou canst not say, I did it; why dost thou shake thy hoary locks at me!” True, sir, you did it not.—But Pitt did it! Grenville did it! ——— did it! and *twenty* others did it!

C A T O.

N. B. An inaccuracy of expression in some of my former numbers, may induce a belief, that the discriminating duty on foreign bottoms is ten per cent. on the *value of the cargo*, when, in fact, it is only ten and an half per cent. on the amount of the duty; or, in other words, one-tenth additional duty.

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### No. IX.

**I**T has been usual in treaties, to confine every distinct matter to a separate article: thus the 22d article of the treaty between France and Britain, declares what is contraband; the 23d article expressly specifies the exceptions. But Lord Grenville's treaty, as if with a view to render the subject as obscure as possible, crowds a variety of distinct matter into the same article, which makes it much more difficult to reason on the subject, unless the reader will be at the trouble of turning to the article at the time that he hears the commentary upon it. The article before us contains three distinct matters; first, it enumerates contraband, without excepting any one article shipped from the United States, other than unwrought iron and *fir plank*; as is usually done in similar cases, and which would have been peculiarly proper in the present case, because of the sweeping words, “and generally whatever may serve directly to the equipment of vessels;”—words of such extent as to include a very considerable portion of our exports, which by this article, are to be forfeited.

The second member of this article is extremely difficult to define. I shall, therefore, give the very words of the treaty, that every reader may judge for himself, and if he can peruse them without the most lively emotion, I shall not hesitate to

declare, that he is no *native* American. “And whereas the difficulty of agreeing on the precise cases, in which, alone, *provisions and other articles*, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniencies and misunderstandings which might thence arise; it is further agreed, that whenever such articles, so becoming contraband, according to the existing law of nations, shall, for that reason, be seized, the same shall not be considered confiscated; but the owners thereof shall be speedily and completely indemnified,” &c.—The first member provides that in case of a vessel's going to a blockaded port, she shall not be confiscated, till after *notice* of such blockade.

The second, then, does not refer to the case of a port which is blockaded; but must refer to some other cases, in which Mr. Jay admits, that *provisions and other articles*, not usually contraband, may be rendered such. Now I know of no case in which provisions, and more especially other articles not usually contraband, can be considered as such. It is true, Vattel has this loose expression in the enumeration of contraband: “*Les vivres meme en certaines occasions où l'on espere de reduire l'ennemi par la famine.*” “Even provisions where they hope to reduce the enemy by famine.” I have shewn that great changes have taken place in modern times with respect to the laws of nations; that every nation has, in its treaties, expressly excepted provisions; and that England has herself done so in her late treaty, even with France. But admitting Vattel's words in their utmost latitude, they can only refer to the case of a place blockaded; and this is referred to in another part of the article, and therefore not intended by this, which alludes to some *undefined case*.

If there are really cases to which it can properly apply, independent of a blockaded place, as the object related to the whole remaining trade of America (that in lumber and naval stores having been before ceded) surely it was the duty of our minister, particularly as he was a lawyer, and must be supposed competent to the subject, to have specified those cases as accurately as possible, and to have confined them to the narrowest possible limits, where any doubts could have been entertained on the subject: this was necessary, not only to put his countrymen upon their guard, to enable them to make some estimate of their risk and loss; but to point out to them the cases in which they might appeal with success. But, says the treaty “it is difficult precisely to determine the cases.” Why so, sir? Are the cases so very numerous, or are they so doubtful? If both, or either, they called for the more care and accuracy in the enu-

meration and definition. Are they not ultimately to be decided some where ? Or is the difficulty of deciding, to justify the capture of every American vessel loaded with provisions, or any other article ; for the articles which are to become contraband, are as undefined as the occasion which makes them such ? I again ask, sir, by what rule is this question, so important to our commerce, to be decided ? You say, by the law of nations ! but where is this law to be found ? The writers on the law of nations, like the writers on every other law, differ from each other ; but if the cases are precisely laid down, why not state them ? Was the chief justice of the United States less capable of doing this than the captain of a Providence privateer ? These cases could either be defined with precision, or they could not : in the first case, they should have been stated ; in the last they should not have been affirmed by the signature of our envoy. But when an American vessel is brought into a British port, the maritime judge must do what the chief justice of the United States and Lord Grenville could not do ; he must determine, whether her cargo, consisting of provisions and other articles, is or is not within the case in which they may become contraband. Now, let me ask, sir, whether, after what we have seen of their decisions, it was prudent to leave the whole commerce of these United States to their mercy, by giving them an unlimited power to judge, in cases of so much intricacy, that you yourself could not agree upon them ? Do you reflect, sir, that you have, by this very article, authorized them, even if, contrary to their usual practice, they conform to the law of nations, to condemn every vessel going to any port of France, or their colonies, with provisions, or returning from their islands to any port in Europe, loaded with the produce of those islands, and that they derive this right from the very words of your treaty ? The rule of the law of nations, as laid down by Vattel, and which is also a rule of the civil law, is thus : “ that if he who can and should explain himself clearly and fully, neglects to do it, so much the worse for himself ; he shall not be admitted afterwards to make restrictions, which he has not expressed.” Now, the court of Great Britain has officially told us, that she has a right by the law of nations, under the peculiar circumstances of France, to interdict all trade in provisions with her or her islands ; as also to prevent any part of the produce of her colonies from being carried in neutral vessels to any port in Europe ; the clamours excited by neutral powers, and the apprehension of drawing upon herself new enemies, made her suspend *some* of these constructions : but with respect to *us*, as appears from Mr. Pinckney’s and Mr. Hammond’s

letters, she still keeps up the right, as she says, under the law of nations. Her courts, conforming to this sentiment, have uniformly condemned a great number of cargoes, agreeably to the law of nations, say they, as expressed in those instructions. During the whole of Mr. Jay's negotiation, there was no formal revocation of them, but their admiralty courts proceeded to condemn. Under these circumstances, Mr. Jay agrees, 1st, That there are cases (other than those of blockaded ports) in which provisions and other articles are contraband; and he agrees too, in effect, that the British courts of admiralty shall determine what those cases are; does not this amount to an explicit relinquishment of *our* construction of the law of nations? Are we not the party whose interest it is (agreeably to the doctrine laid down by Vattel) to explain ourselves clearly and fully; and does not our neglect to do it (agreeably to the same authority) justify the British construction of the law of nations? Does it not relinquish our claim for every injury we have suffered under the very instructions which Mr. Jay was sent to remonstrate against? And this fully proves, what I before asserted, that Mr. Jay's commissioners could give no redress to our citizens for the loss of their property, under those instructions. That the British have viewed the treaty in this light, is evident, from the orders that they have lately renewed for the capture of our vessels going to France or Holland, dating their order about the time in which they might reasonably suppose the treaty would have been ratified here.

These observations apply with equal force to the third member of this article: For as the British claimed a right to declare a whole nation at a time in a state of siege, even when that nation had beat them out of the field, to capture and condemn all vessels going to any port of such nation, and as we at this moment agree, that our vessels might be so captured and condemned, without defining, or in any part limiting the words, blockade and siege, do we not tacitly agree to their construction of the term? Repugnant as this definition is to the established and known laws of nations, it is very remarkable, that where the most rigid construction of the laws of nations can be made to operate against us, in order to preserve them in full force, and in contradiction of the settled practice of modern times, Mr. Jay has added to these laws, the weight of a national stipulation against his constituents—but where the writers on natural law advance a principle, beneficial to us, Mr. Grenville's treaty cautiously avoids putting it out of doubt, or giving it any additional force. Thus Vattel declares, "That it is now received, that full faith and credit should be given to certificates and sea

letters, &c. that the master of the ship presents, unless a fraud appears, or there be good reason of suspicion."—Lib. III. chap. vii. (114)—and in every treaty of commerce, and navigation, that has been made, for upwards of one hundred years back, this principle is enlarged upon, and violences in boarding a ship, to examine her papers, guarded against by fixing that the armed ship shall remain at a distance, that the neutral vessels shall be boarded by two or three men only, that full faith shall be given to papers, &c. Yet not one word of this is to be found in Mr. Jay's treaty, except a mere vague agreement, that neither party shall injure the other in their persons or estate, and shall make good all damages and be punished for outrages, without defining what these outrages are, or fixing a line, which it should always be an outrage to pass.

That the British idea of outrage differed from ours, we know; for Mr. Jay himself possessed the fullest evidence of outrages committed by captains of men of war and privateers, in plundering our vessels, and pressing and ill-treating our seamen; yet we hear of no officer that has lost his ship or commission on this account: and as to private suits, every man knows, that the expense and distance will prevent their being brought. With all the treaties hitherto entered into by the United States before him, as well as all other treaties made for a series of years past, which are accurate on this point, could Mr. Jay be ignorant of the common practice of nations? Was he ignorant, that the abuses we daily suffered at sea, in the boarding our ships, with numerous bodies of armed men, in the contempt manifested for our papers, in breaking up the hatches, and endangering the ship, were among the causes of complaint that the president sent him to prefer? If he was not, why are not these evils guarded against by an express stipulation, that faith shall be given to papers, that no ship shall be searched or detained, where her papers are fair, and she does not refuse to show them! why are not privateers ordered to remain without gun shot (as in our treaty with France, and the treaty of France with Britain, &c.) while no more than two, or at most three hands are admitted on board the neutral ship? Why are vague and general terms substituted for these wholesome provisions, unless it be with design to subject our commerce to unceasing insults?

The same abandonment of our navigation runs through every commercial article. By the seventeenth, the British are empowered (contrary to the principles of the armed neutrality, which have evidently changed the law of nations, by the general consent of the great community of civilized nations, and to which Britain herself has in effect acceded, in this particular, by her

late treaty with France) to take enemies' property from on board our vessels. One would have imagined, even if the law of nations had been clearly against us, that mere delicacy, with respect to the nations with whom we have treaties, by which we can protect the property of their enemies from them, would have induced us to refrain from a stipulation, by which we voluntarily sacrificed their property under the protection of our flag to their enemies.

But that Mr. Jay did not think the law of nations on this point settled, appears from the last parts of the twelfth article, in which he leaves the question open to be discussed two years after the war: but one would certainly have expected, that as this article rendered every vessel we have, liable to search and detention, that two points would at least have been settled.—1st. That such papers would have been agreed upon, as would have saved the risk and danger of a search at sea. 2d. That when a vessel, brought into port on suspicion of having enemy's property on board, was dismissed, she should have her freight and demurrage, &c. paid *immediately*: that none of her hands should be taken out of her: that she should be, from the time she was taken, till she left the port, at the risk of the captors.—Yet we do not find a single stipulation of this kind in the article; none even for port charges or law expenses, if she was wrongfully brought in.—But it is left wholly to the discretion of the courts of admiralty, whether they will give any or what damages, &c. That they will give none in most cases, past experience has fully confirmed.

If it is said, the law of nations entitles neutral ships to damages, &c. I ask whether the law of nations has hitherto been the law of the British courts of admiralty? And, whether an express stipulation would have given us too great a security against West India and Bermuda judges? I ask, whether the neglect to make any precise stipulation in this case, is not a new proof, of what I have before observed, that where the law of nations was *favorable to us*, no stipulation is made to enforce it; and that where it is *unfavorable*, there it is strengthened by an express provision? an instance of both occurring in this very article.—Doubts might be entertained, whether neutral ships should not protect enemies' property—these doubts are determined *against us*, by the express words of the article; while our right to freight, &c. is left to Judge Green's construction of the laws of nations.

C A T O.

## No. X.

**I**T may not be improper now to review our commerce, as it would stand, were the treaty carried into effect. The Indian trade from Canada, alone, produced at public sales in London, in 1784, £. 230,000 sterling. The duties thereon were in round numbers, £. 17,000. The tonnage of furs and peltry, about 1000 tons. The exports from Canada in furs, exceeded in 1785, that of the preceding year, about £. 70,000 sterling, and has, I believe, continued to increase; so that this branch of trade may be fairly estimated at near 100,000 dollars yearly. As nine-tenths of the Indian nations, who carry on this trade (if the territories of the Hudson Bay company are excepted) live within the boundaries of the states, as we enjoyed every advantage in the right to the posts and postages, the greatest part of this valuable trade must have been ours, had not Mr. Jay thought proper to *cede it*, in effect, to the British, as I have before stated. The Indian trade, in the southern part of our territories, is principally in peltries, which are too bulky to be transported in any other way than upon large rivers; the Mississippi will be the out-let for a very great proportion of them. This commerce must have been exclusively ours; for though, by the treaty of Paris, the British might navigate the Mississippi; yet, as they did not own a foot of land upon either of its banks, it became impossible for them to avail themselves of this advantage; whereas the United States possessing all the Indian country, in the vicinity of that river, and the east bank for many hundred miles, could, when they pleased, establish factories, and monopolize that commerce; and in addition to this, carry on a very important (though illicit) trade with the Spaniards, who own the opposite bank. This our minister extraordinary was too munificent to allow us to avail ourselves of. He therefore provides, in the third article, "that all the ports and places, on its eastern side, to whichsoever of the parties belonging, be freely resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places, &c." then comes a clause declaring, "that all goods and merchandizes, whose importation into the United States is not wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by his majesty's subjects; and such goods and merchandizes shall be subject to no other or higher duties than would be payable by the citizens of the United States on the importation of the same in American vessels, in the Atlantic ports of the said states." I have already shown, that the effect of this last provision is to give British ships a bounty proporti-

oned to the amount of the equalizing duty on the out and home voyage, taken together, to the prejudice of American vessels; which, with the perfect equality of rights, that they hold in common with our own citizens, and an addition of 46 cents extra tonnage, and light money, with which, as I have before shown, our vessels will be charged, must put this important commerce into the hands of the British. This, I presume, must have been the intention of our minister, when he speaks of the ports on the eastern bank of the Mississippi, to which soever of the parties belonging; for, as the British have no ports on the eastern side, Mr. Jay must have looked forward to a time when these extraordinary bounties to their commerce and perfect security for their establishment, should have enabled them to possess themselves of that country; and that, though the article is not reciprocal at present, by the prudence and good management of our envoy, it may, in time, be rendered so. This article is perpetual; so that bidding an eternal farewell to all commerce with our own country, we turn our anxious eyes to some other to supply its place: The terms on which our good friends, the British, propose to open their islands to us, are such, it seems, as even our senate cannot approve; are such as Camillus himself abandons; it may, however, be some consolation to us to know, that these islands, whose trade we were to purchase with the dereliction of several very valuable branches of commerce, are not of so much importance as the advocates of Britain would have us suppose, and for that reason I insert the following tables:

*Sugar imported into the United States in 1790.*

From the French islands,	9,321,829 lb.
Dutch ditto,	2,707,131
Danish ditto,	2,833,016
	<hr/>
	14,861,976
British ditto,	2,230,647
	<hr/>
	17,092,623

So that, after all, were our other branches of commerce left unfettered, we should be able to do without that of the British islands, which only amounts to about one-eighth of the whole West India trade. And such is the dependence of those islands upon us, that they must either starve or be supplied by us upon our terms. As this was too obvious to escape the attention of Lord Grenville, and our minister, they have provided, 1. That we shall impose no new duties on tonnage; that is, in other words, that, treat us as she will, Britain shall still have the



right to carry our produce to her islands in her own vessels, to the exclusion of ours. 2. That she shall also, if she pleases, prevent our carrying our produce to the French or Dutch islands, or their produce to Europe, at least during a war, which has been, for one hundred years back, thirty years out of seventy; since she has nothing to do but to declare them in a state of siege, or to allege that the articles are contraband, or that this is one of the cases in which they may become contraband, though not generally so; and she will then be justified, by the treaty, in carrying them into her own ports, where seamen may be pressed on board their ships of war, seduced to swear that the cargo is enemies' property, and thus the whole be confiscated; or if this great evil should be avoided, compel the owner to pay his own expenses, and to take whatever the captor shall deem a reasonable profit, without any regard to the loss he sustains, in the breaking up his voyage, &c.

In peace, France will, with justice, avail herself of the article which entitles her to put her trade upon the same footing as that of the most favored nation, become her own carrier, and banish our vessels from her islands, as we have permitted the British to exclude us from theirs. Europe, perhaps, will be more favorable to us. But here again we have, by the equalizing duty, and the extra-tonnage and light money, rendered it impossible to carry our commodities to Britain in our own vessels; while we, at the same time, bind ourselves not to give such advantages to other nations as would open new markets for them. Britain then must continue to navigate; for no other merchants must monopolize our commerce; her officers must strut upon our exchanges with all the "dignity due to their commissions;" her high commissioned courts may drag us from one end of the continent to the other; must establish new rules of jurisprudence; and you, my unhappy fellow citizens, must be content with the humble offices of hewers of wood and drawers of water, to these insolent islanders.

During the war, the concessions relative to contraband amount to an absolute prohibition of any trade in naval stores, timber, provisions, and any other article, which the British please to call contraband, under existing circumstances, either with France or Holland.

The new treaty with the Algerines, will exclude you from Portugal, and render your voyages to Spain dangerous.

With the Baltic we have little commerce that will bear a war-freight, other than in the West India produce, which Britain has said we shall not carry to Europe; and Mr. Jay has acceded, expressly in the 12th, and impliedly in the 17th arti-

cle, to this prohibition; so that the commerce of the world (the East Indies and Great Britain alone excepted, and this latter, as I have said, can only be carried on, in peace at least, in British bottoms, is interdicted to us. During war, indeed, we may continue to carry, while the insurance is less on our ships than on those of Britain, provided that our seamen will choose to continue in a service in which they are liable to repeated insults; provided that the wants of the British navy shall permit them to leave us any, of which there may be some doubts, as we just learn that a single frigate (since the treaty was advised to be ratified) pressed 35 of our seamen upon our own coast, and another, the *Hermione*, no less than 70 in the West Indies: A ship, too, we are informed, loaded with provision, has been carried into England, agreeably to an express stipulation in Mr. Jay's treaty, either under pretence that the provision is contraband, or that it is enemies' property; and before any investigation into the merits of the capture, every seaman is taken out and put on board a frigate.

Our whole stock of seamen does not much exceed 12,000. How long this will last, with such deduction, and the infinite loss of those of our sea-faring citizens who are carried into the islands, and compelled to serve on board ships of war in that unhealthy station, I am unable to say. Now let me ask, whether our commerce is not upon a much worse footing, than it was before Mr. Jay went to England? Whether every injury, for which he was sent to seek redress, has not been renewed with double rigour? Whether by yielding that the British may, of *right*, search our ships, and confiscate the property of our allies, which they before did by *force*, we have not ceded to those allies a right to declare that our ships shall no longer protect the property of their enemy? Can we expect, that they will suffer their treaties to entangle them, and extend protections to their enemies? It is not to be expected; they will be compelled, by necessity, to treat us, as we have *agreed* that the British shall treat us; in which case, as Britain will not let us trade with France or Holland, France and Holland will interdict our commerce with Britain, Spain, and Portugal; and thus the trade and navigation of this country be finally destroyed, by the means that were intended for its protection.

How different has Mr. Jay's conduct been from Mr. Pinckney's! Read his letters to Lord Grenville. He maintained our right to protect neutral property; he protested with firmness against the absurd idea of naval stores and provisions being contraband; he saw the wide difference between admitting a thing to be *right*; and yielding to the *necessities* of the moment, which

circumstances might hereafter enable us to contend against with success. Indeed it may be doubted whether the right given by treaty to take enemies' property out of our vessels, is not a "privilege or immunity" granted to the commerce and navigation of Great Britain; in which case, by the third article of our treaty with France, they have also a right to claim it; which establishes an important distinction between *suffering* this from necessity, and granting it by treaty.

The ill effect which this treaty must have upon our national character, exceeds all calculation. A young nation, like a young man, is bound to be particularly solicitous on this head; nor can any thing be more repugnant to the interest and honor of the country, than the shocking indifference that our ministerial writers and their newspapers endeavour to inculcate on this head. Thus they say, "We are growing rich in spite of all these injuries; let us mind our business—let us submit. We shall hereafter be strong, when we may bluster at our leisure." What should we think of the tutor that should inculcate on a young man the same maxims? "Suffer yourself to be kicked and cuffed now, while you are young; let your sister be ravished, and your wife be debauched, by the lecher who permits you to get money. What though he insists upon sharing a part of it with you, and now and then lays his cudgel over your head? Submit now to smile upon him; by and by you will be as strong as he is, and then you may bully him in turn."—What, I say, should we think of such a tutor, but that he was a villain and a scoundrel, who was leading his pupil through the dread of present evil to debase his character, and to invite infinitely greater evils in future, than those he feared to meet at present. What first raised the American character, and acquired for it the admiration of the world? Was it tame submission to the injuries of Britain? Was it a scrupulous calculation of what we might gain, or what we might lose, by the controversy? No, my fellow citizens; it was a bold resistance. It was an ardent passion for honor and freedom, that left all calculation of personal interests out of sight, and counted every thing was lost, if these were not won.

C A T O.

*Fellow Citizens,*

**I**N my former numbers, I endeavoured, 1st, To shew that the object of Mr. Jay's mission, so far as related to a compensation for the injuries received, and security against future aggression, was not accomplished. While I was yet writing, the renewal of them proved, beyond contradiction, that my remarks were well founded, and that the British construction of the treaty was unhappily too similar to my own; since they only waited to give sufficient time for its ratification, to recommence, with added violence, their depredations on our trade, and their outrages against our citizen seamen. I then examined the treaty in a mere commercial light, without indulging myself in those general reflections which arose naturally from the articles under consideration. I proceed now to consider it in a political point of view—Would to God, my fellow citizens, I could here find some source of consolation, some ray of light, to irradiate the sullen gloom!—But alas! every step we take, plunges us into thicker darkness. We might, perhaps, have submitted to past losses; have seen our commerce given away without an equivalent; our navigation ruined; our seamen (I blush with shame and indignation, while I say it) our citizen seamen delivered over to the insolence of brutal tyrants, could our national honor have been preserved in future—could alliances, formed by interest and gratitude, have been left unimpaired—could peace have been established upon firm and honorable terms—could the private rights of our citizens, the public ones of our government, have remained unviolated—but the indiscriminate ruin of all these is too much to be borne in silence. Even the coward-advocates for peace, feel their spirits arise at the unexampled indignities which this treaty imposes. And for what? Are we nearer peace (if by peace is meant the security of our persons and property, from foreign depredations) than when Mr. Jay left this country? Is there a single outrage which we suffered before, which is not continued to this moment? And yet the advocates for the treaty are continually ringing in our ears, the blessings of peace, the horrors of war; and they have the effrontery to assure us, that we enjoy the first and have escaped the last, merely (to borrow a ministerial term) through the instrumentality of the treaty. Does any body believe, that if we had continued to suffer the British to plunder our trade, to man their ships with our seamen, to possess our frontiers in quiet, that they would have declared war upon

us, at least till they had conquered France? And can any man deny, that it would have been better to have preserved this darling, but base-born bantling, which excites our blushings while we fondle it, by mere submission, than to legitimate the bastard, and compel ourselves for ever to maintain it upon the same disgraceful terms, by marrying its lewd mother? In a political view, the treaty is bad; as it detaches us from engagements which our interest and honor equally invite us to maintain: as it sacrifices our friends to our enemies, and holds forth to the world, that those nations who treat us worst, will share the greatest portion of our attachment; and that, like fawning spaniels, we can be beaten into love and submission, notwithstanding the corrupt maxims that were circulated under the signature of Pacificus, with a view to promote the league of despots against France.

Notwithstanding the indecent attempts that were made about the same time, by several members of congress, to shew that we owed her no affection, the principles of gratitude have still maintained their ground in this country; and they have been strengthened by the necessity which every American felt, of securing some ally against the design which Britain almost openly avowed, of again reducing this country, when her means, strengthened by the interest she had in our councils and in our commercial cities, should afford her a prospect of attempting it with success. It is singular to observe the extreme solicitude with which a party, among us, have endeavoured to detach the affections of this country from the only nation with whom its true interest would prompt it to form a close and strict alliance, not only because its government is similar to our own, but because its commerce is more advantageous to us than that of any other nation in the world; while its manufactures are such as can supply the greatest part of our wants, its demands for our produce are so much larger than that of any other nation, that she actually pays us a considerable proportion of that balance in money which we are compelled to remit to Great Britain on the losing commerce which we carry on with her. It will be remembered here, that near two millions of our former exports to England, were consumed in France, and as much more in other countries. It will be remembered, too, she gives the highest encouragement to our navigation, while her insular rival uses every means to depress it. Yet whenever any attempt has been made to encourage this commerce or strengthen this alliance, the most violent clamours have been excited by the British faction, aided by our own royalists, and the slightest incidents have been seized with avidity to render her

obnoxious. Thus the imprudent warmth of Mr. G——t called forth all the zeal of the party; ministers, chief justices, senators, &c. joined in full cry, to run down the French nation, under the appearance of regard for the honor of their own, while they were so totally regardless of its interests as to overlook the offers that he brought, of such commercial advantages as might have made us see with contempt, the narrow policy of the British government in excluding us from their islands, which the liberality of France must have compelled her to open to us on our own terms.

And yet these very men have heard with the utmost indifference the insulting speech of Lord Dorchester—the insolent correspondence of H——d, which went, both in matter and manner, far beyond any thing written by G——t; and while they discouraged a connection with France, founded upon mutual advantages, they meanly supplicate Britain to treat with us upon her own terms, and contrive that this treaty should serve the double purpose of connecting us with her, and detaching us from France. At the same time, they have the effrontery to assert, that the treaty contains no article which can reasonably give umbrage to France, or which in any way derogates from the friendship that should subsist between the two nations. I shall proceed briefly to consider the truth of this assertion.

In the enumeration of contraband, Mr. Jay has included articles which are essential to France, and which have not been considered, as far as I have been able to discover, as contraband in any treaty for 140 years past. In admitting that provisions may be contraband in any case (except when going to a place blockaded) Mr. Jay has also admitted, what no treaty ever before did, though tyrants have sometimes claimed a right to stop them. The United States had evidently no interest in either of these articles; of course they could not be reciprocal, nor is any equivalent offered for them. France and Britain were at war: *these articles were protected in going to the latter by our treaty with France; so that in admitting them to be contraband, we necessarily confine the sale of them to Great Britain, and exclude France from availing herself of our commerce in these articles, unless at the utmost risque and expence; we make their generosity in excepting them from the list of contraband (if they really were such by the law of nations) afford the means of furnishing them to their enemy: for if our treaty with France and Britain were similar in this respect, the risque and expence would have been equal in going to either country; and both would have obtained these commodities upon pretty much the same terms. It is evident, then, that these articles could only have been dictated by*

a spirit hostile to France, and as such they are a direct breach of our neutrality.

Vattel, in enumerating the cases in which a neutral nation may carry on a commerce with the belligerent powers, has these words, which directly apply to the case before us: "If they (the neutral nation) refuse to sell me any article, and take measures to supply my enemy with it in abundance, with a view to favor them, this partially is a breach of the neutrality." Whatever has been said with respect to the above article, applies with equal force to the right that the treaty gives to Britain to confiscate the property of their enemy found on board our vessels, contrary to the modern law of nations, and their own admission of its principles in their treaty with France. But if any thing was wanting to show the hostility of these articles, it could be found in the time we had pitched upon to enter into them, and that we had stipulated for their continuance. 1st, as I have said, France was actually at war. 2d, By the 12th article it is agreed that these provisions shall continue in force during the present war, and for two years after, when the parties "will renew their discussions, and endeavor to agree, whether in any, and what cases, neutral vessels shall protect enemies' property; and in what cases provisions, and other articles, not generally contraband, may become such."

From this it is evident, that these were questions of doubt in the minds of the contracting parties; they were speculative questions, as capable of solution in the present moment, as at any future period; the discussion of them could have no reference to a war between powers with whom we were at peace; the declaring, therefore, that this doubt should be construed as unfavorably as possible to France, and directly in favor of the British, even to the partial injury of our own commerce, without any *apparent* equivalent, and that, too, *during the war*, how long soever it may last, is so unequivocal a proof of hostility, that it is impossible to mistake the intention of the contracting parties, which, reduced to plain language, is this: "these articles may be inconvenient in future; but as the execution of them will be very injurious to France, whose reduction we both wish, we agree that his Britannic majesty shall have the full benefit of them, *for the present*; and when, by this operation, he shall have reduced France to submission, we will agree to modify them, so as to render them conformable to our interests." Injurious as these articles are to our commerce, the baseness and perfidy of them are so much more so to our national character, that the first of these considerations is almost lost in our resentment of the last. By the 24th article it

is expressly stipulated, that no power at war with Britain shall sell their prizes in our harbours.

Now by the law of nations, independent of treaties, any nation may carry her prize to a neutral port, and sell it, Vat. 3 lib. ch. vii. 132; and accordingly, France has hitherto been permitted, without any express stipulation in her treaty, so to do. To withdraw this right, *now*, in the midst of a war, though not expressly against the law of nations, has certainly a most ungracious and unfriendly appearance; especially as it is done without our being able to apologize for it by any interest that we can have, at least during this war, in the stipulation. As it was foreseen, at the time that the treaty was entered into, that Holland must be conquered, and that she would make an ally of France; the 25th article, which admits the British to bring their prizes into our ports, and forbids the armed vessels of any other nation (France excepted) to enter them, unless forced by stress of weather, &c. and which agrees that we shall not in future, let any other nation share this favor, is certainly no evidence of a friendly attachment either to France or Holland; and yet these powers were our friends and allies, when Britain was our bitterest foe. I forbear to remark upon the stipulations we have made in favor of the navigation of Britain, as speaking the same unfriendly language; since this is a less aggression and will undoubtedly be returned upon us by other nations; so that the whole loss will ultimately fall upon ourselves, and the crime carry with it its own punishment. The liberality which France manifested to us in our distress—the succour she afforded us—and the unexampled generosity she manifested in taking no advantage of our situation, to impose unjust or hard conditions upon us, certainly should have rendered us cautious of favoring a nation, that has wantonly, and without the slightest provocation, declared herself her enemy, and used the most barbarous and unjustifiable means to distress her. We should have shuddered at being parties to a compact, to starve 26 millions of our fellow creatures—at the thought of aiding Britain in her endeavours to repeat in Europe the horrid barbarities she had committed in India. We should, even if we had no obligations to France, and been blind to our own interest, we should still, for the sake of humanity, have resisted a treaty, which admitted, that the necessities of life could, in any case, be justly withheld from a famished nation. But if all these motives had no weight with us, we should have reflected on the forbearance, the delicate regard that France has shown to our circumstances, even in the midst of her distress. By our treaty we have guaranteed her islands to her;



these islands are attacked; she is entitled to the benefit of our guarantee. Yet she has forborn to ask it, as she believed it inconsistent with our interest to go into the war. Can we expect the same forbearance, after the predilection we have manifested for her most inveterate enemy? if not, are we prepared to choose between a breach of faith with her, the relinquishment of her guarantee of our independence, or a war with Britain?

C A T O.

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 No. XII.

**A**S every neutral nation may, without forfeiting that character, suffer the belligerent powers to dispose of prizes in their harbours—as the United States will generally be at peace, while Britain is engaged in wars, 30 years out of 70, very considerable advantages would result from this circumstance.—During a general European war, the commodities of all nations would be sold (as prize goods generally are) at a low rate, would supply our own wants, and be transported in our vessels to every part of the globe, and the demand for commodities and mechanics, necessary to the fitting of vessels, would add to our wealth and stimulate our industry.—To relinquish these advantages without an equivalent, is certainly very unwise, particularly when it is considered, that our situation in the neighbourhood of the colonies of all the maritime powers, must render the free admission of some and the exclusion of their enemies, extremely important to them. We have, therefore, been very tenacious of this privilege, and denied it even to Holland, who may be considered as one of our earliest allies. Yet the 24th article of Mr. Jay's treaty expressly stipulates, that no foreign nation, at war with Britain, shall sell her prizes in our harbours, excludes their armed vessels, and stipulates that similar privileges shall be granted to no other nations; and all this without any equivalent—For though the provision is *mutual*, yet the advantage is entirely on one side—1st, Because Britain being our only natural enemy (by natural enemy is understood one whose interests clash, either because of the *contiguity of their territories*, or rivalry in their pursuits) it is highly improbable that we shall be engaged in any war in which she is not a party against us. 2d, Because our distance from Europe will prevent our being often engaged in those controversies which convulse that quarter of the globe. 3d, Because there is no

naval war in which Britain is not a party; if we should happen to be engaged on the same side with her, we should mutually use each others ports without a treaty; if we should be opposed to her, the treaty will cease to operate; so that in every view, we have made a very important concession in this particular, without having acquired any thing in return. The article is extremely exceptionable in another point of view. The construction is so doubtful, that a similar article gave birth all the controversy between our government and Mr. Genet. It would certainly have been prudent then to have varied the expression, and cleared clear of this ambiguity in treating with a nation who wrests every possible doubt to her own advantage—and who finds chief justices and senators, and ministers extraordinary, and advocates, among ourselves, ready to support her constructions, be they ever so absurd.

By the 15th article, we are prohibited from imposing any specific duty on British articles, which we do not extend to all other nations, from increasing our tonnage duty or imposing any greater charge on the importation of goods in British bottoms than *now* subsists. I have already shown the mischievous effect of this article upon our *navigation*. I will now consider it, as it regards our political relation with other nations.—Treaties are bargains, in which something is given in return for some other received. Those, then, that put it out of their power to *give*, cannot hope to *receive*. Suppose, for instance, we should find it convenient, in order to procure a market for our fish and oil, to bargain with France for their free admission into her ports, and promise in return to receive her manufactures of silk at a less duty than we impose upon the same articles brought from elsewhere. This is the policy of Britain with respect to Portugal, whose wines she favors in preference to those of other nations, in return for advantages she derives from her commerce.—This article puts such a bargain entirely out of our power; yet suffers Britain to continue her restrictions upon a variety of our commodities. While it remains in force, no treaty whatever in favor of our manufactures, navigation, or commerce, can be entered into with other nations; thus, notwithstanding we have not any equivalent from Britain, in return for this article, any relaxation of her oppressive system of navigation, we bind our hands with respect to every other nation—and while she closes one door upon us, promises to leave our commerce and navigation imprisoned without making the smallest effort to open another.

The tenth article of the treaty partakes of the evils of the above, in the want of reciprocity, and in depriving us of the

means of doing ourselves justice, without recurring to arms, when the laws of nations with respect to us are violated. By this article, neither the debts due to individuals, nor money in the funds, are to be *sequestered* or confiscated. First, this is not mutual; because it is well known that few Americans trust their money in British funds, since the establishment of our own. And a balance of about ten millions (exclusive of stock) is due from our citizens, on the general average, to the subjects of Britain. By the law of nations, this property may be *sequestered*; though, in general, it has been *the practice* of late, since the commercial connections of nations have multiplied, not to *forfeit it*, and that, principally, because the balances being mutually due, little advantage would accrue to the nation.

As to the justice or injustice, it never has been made a question; the rule of nations is, "that the property, either private or public, of an enemy, may be taken," and I believe it would be difficult to show, that it was more just to rob the merchant of his goods at sea, because his sovereign was at war, than to forfeit his debts; both being equally the property of an enemy, both tending equally to distress the individual, and neither being a violation of a private contract, because the nation who makes the forfeiture is no party to such contract. If the rights of humanity are considered, a capture at sea is a much greater breach of them, since it is frequently attended with the loss of life, and always with the loss of liberty. The stigma, therefore, that our minister was pleased to introduce into the treaty on this subject, could only have been intended as an illiberal reflection upon those virtuous men in our national legislature, who conceived this a proper fund, out of which to compensate the losses committed by the unjust violences of Britain. That there are cases in which the sequestering and even the forfeiture of debts would be proper, can hardly be disputed; as, for instance, where it might prevent the aggressor from going into a war, by the fear of losing a considerable stake in the hands of his enemy. Where a war has actually broke out, and the sum due is so great as to disable the debtor nation from carrying it on with effect, if she suffered so large a balance to be remitted to her enemy; or where the enemy nation relies on that balance, to support her military operations; surely it will not be disputed, that in either of these cases, in which the safety of the nation so evidently required it, it would be highly imprudent and unjust to the people, to suffer such debts to be paid. So likewise, where the creditor nation had manifested the most hostile intentions, had stimulated barbarians to lead your people into captivity—had employed savages under their

influence, to break up your frontiers, and to murder your wives and children—had, without any pretence from justice, or the laws of nations, compelled your people to fight under their banners against your allies—and had given such interruptions to your commerce, as to distress and ruin your merchants—surely it would be but a slight retaliation for these wrongs, to say to such nation, “we will detain in our hands the balance due to you, till you make ample compensation for the injury you have done us, and if you do not do us justice, we will apply the money ourselves.” Our situation is very peculiar; the balance we owe to Britain, including stock in the funds, banks, &c. cannot be less than twenty-five millions of dollars, a much greater sum than the whole circulating specie of the United States. If it should be known in Britain, that a war with us was intended, as much as possible of this capital would instantly be withdrawn from America; the consequence would be, if the government should not interpose to prevent the evil, and retain the money, that in the moment that we wanted credit most, at the entrance into a war, the nation would be bankrupt; the banks and merchants to whom it would look for supplies, would be ruined and unable to afford them aid, while the credit of Britain, supported by our payments, would enable them to effect our destruction.

Again, by the laws of civilized nations, unnecessary and wanton destruction is prohibited; but the seaport towns of America are extremely exposed. Should Britain, in a war with us, or even without war, under some trifling pretence, think proper to burn our towns, and by this means ruin the merchants that were indebted to them, would it not be just in the government, to retaliate upon their merchants, by retaining these debts, until compensation was made, or even to make compensation themselves out of this money? and where is the difference between making it answer one breach of the law of nations more than another? Why is it less proper to compensate the seamen who have lost their liberty, the family who have lost a father or a son, or a merchant who has lost his property, by the most *direct* violence; than the citizen whose wharf and store are wantonly burned? The truth is, that this debt in our hands had a very considerable influence upon the politics of Britain, with respect to us. There is a great portion of the monied men, who generally go with administration, that would be sensibly affected by the forfeiture, and who are tremblingly alive to every operation of our government with respect to it; while we can work upon their fears, they will always be the advocates for peace with us; remove their apprehensions, and

they will go with administration. There is great reason to believe, that the propositions in congress to sequester this debt, produced the relaxations in their predatory system that took place immediately after. Now, that Mr. Jay has convinced them that they have nothing to fear in future, they have renewed them with equal violence. Can any thing be a better commentary upon the treaty, than the present conduct of their marine? I know that much will be said in reply to this, on the sanctity of public credit, &c. which may indeed prove what I shall readily admit, that so violent a remedy should not be recurred to on slight occasions; but nothing can be said to prove, that *no occasion* will justify such recurrence, or to convince a free people, that their *representatives* are not the proper judges of the occasion.

The strict law of nations, as laid down both by Vattel and Binherst, is, that such debts may be forfeited; the USUAL practice is, to stay the payment, but, not forfeit the debts; and the *constant* practice is, to pay the proceeds of real property, held by the subject of an enemy; into the public treasury, and yet this case is much stronger than the case of debts; because the holder of real property derives his title from the state itself; but it is deemed absurd to let property pass from a state (when at war) to its rival, in order to feed the fire that is to consume themselves.

Let me ask, if a contract were made, during peace, by the merchants of one nation to deliver arms and ammunition to the merchants of another, and a war was to break out, or even to be rendered probable between these nations, would it be wrong to stop the delivery of those arms, though they should have been actually paid for? And is money less a necessary of war, in the present state of things, than arms? Should we be less weakened by paying all the current specie of the country, stopping our banks, and sinking the public funds, than by sending away a few tons of powder, or some hundred stand of arms? But if the law of nations on this subject is clear, to what purpose enter into new stipulations to give it a more binding force? A breach of the law of nations by an enemy, often renders that right which would otherwise have been wrong; *retaliation* is one of the laws of nations; but that law, so frequently essential to the support of our rights, is, by this article, entirely taken away, so far, at least, as relates to this object. And yet, this is the ground on which we might retaliate with the greatest prospect of success. But in any event, as we will always be the debtor nation, to what purpose are our hands bound? What equivalent do we receive for this important concession? The

having it in our power to hold this up in *terrorem*, if we never made any other use of it, might answer important purposes. Who can say, that it may not be at sometimes proper to discourage the British from engrossing too great a share in our stocks and banks, or even giving too great a credit to our merchants? we already see the influence they have acquired over the *politics* of the country by means of these.

The fact is, that this article is dictated by the same principle that pervades so many others in the treaty; our trade and navigation are surrendered to the British. Colonies of their merchants and factors are to be established on the north and on the west, on the sea coast and on the Mississippi. Our banks are to be placed in their hands, and that the thralldom of the country may be complete, every encouragement is to be held out to their brethren in England, to extend their credit and fetter the country by the excess of their debt; at the same time, all the resources of the country are to be surrendered to them, even our last farthing is to be drawn away, whenever it may be found necessary to bring us back to our former state of dependence upon their sovereign. Would it not have been wiser in America, to have submitted to the stamp act, with the advantages we enjoyed under the British government, than by yielding to this treaty, to render ourselves equally dependant, without enjoying the rights of subjects? All that she would have drawn away in taxes, would not have equalled our present debt; our seamen would not have been treated so harshly as they now are; our commerce would have been less deranged; and the disgrace of slavery would have been less degrading, if we never had been *free*.

CATO.

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No. XIII.

**T**HE few advocates that the treaty has yet met with, pretend to be zealously attached to the constitution of the United States; and endeavour to persuade weak minds that the opposition to it has originated in opposition to the federal government, and in party views and party principles; yet unfortunately for them, it has so happened, that the states in which there is least of party spirit, manifest most warmth and most unanimity in their opposition. Thus South Carolina, and the city of Charleston particularly, Maryland, Delaware, Jersey, and New-Hampshire, have contained no antifederal party; yet

they are more decided in their disapprobation of the treaty, than New York, Philadelphia, or Boston, where such parties have been supposed to exist. Is it not evident, then, that the support the treaty has received, has originated in party principles, aided by the British interest; while the principal opposition, originating with men who are distinguished for their attachment to the federal government, must be attributed to pure and disinterested patriotism, at whose shrine they have sacrificed their predilection for men and measures, where that predilection clashed with their committee's reports?

It is remarkable, too, that if we look over the list of names of the persons who were members of congress in 1775 and 1776, and subtract from them persons immediately connected with the government, and who may be supposed to have influenced the treaty, we shall find them decided in their opposition to it, even though many of them have for years past retired from politics, and in no sort interfered in the parties of the day.

In Carolina, both the Rutledges and Gadsden.—In Virginia, Jefferson, Madison, the grave and moderate Chancellor Wythe, who himself presided at the meeting that addressed the president on the subject of his proclamation, which was then deemed a test of violent federalism, together with every distinguished citizen of that important state, not holding an office.—In Delaware, the celebrated John Dickinson, the *Pennsylvania farmer*, whose enlightened pen was among the first, and certainly the most distinguished, that has been marshalled on the side of American freedom.—In Pennsylvania, Governor Mifflin, Chief Justice McKean.—In New Jersey I believe none of the old members of congress are now living; but the uniform sentiment of that federal and patriotic state, may be urged as a proof of what their sentiments would have been, had they lived to blush at this blot on their country's honor.—In New York, Floyd and Livingston are known to be decidedly opposed to the treaty. What are those of Schuyler and Duane, Lewis and Morris, the only surviving members, Jay excepted, I know not. That Mr. Jay, though he has made the treaty, does not approve of its principles (unless, indeed, Mr. Jay the negotiator, is a different man from Mr. Jay the writer of an address to the citizens of New York on the subject of the federal government) is obvious; for that address, if examined, will be found to urge our union as a mean to regulate our commerce, or to compel foreign nations to relax their impositions, and even to open their islands to us; I speak from memory, not having the address before me. Now, if this sentiment was just then, when our numbers, wealth, and resources, were much

less than at present; and when Britain was at peace, and one hundred millions less in debt than at this day, Mr. Jay must necessarily disapprove now of a treaty, which puts it out of our power to regulate our own commerce; which confirms all the restrictions that we then considered as hostile to our trade and navigation, and an infinite number of new ones, that did not then exist: which, instead of opening their islands, closes them upon us, unless we will consent to purchase an insignificant right to visit them in *boats*, by a disgraceful surrender of an important part of our commerce. So that we may, on the fullest proof, deduced from his unbiassed declaration, under his own hand, number Mr. Jay among those who in sentiment disapprove of the treaty. The opinions of the then members of Connecticut, if any of them survive, or those of Mr. Samuel Adams or of Mr. Paine (who, however, holds an office) I am unacquainted with. Neither of the gentlemen who then held a place in congress, from Rhode Island, are now living. The only surviving member of that day from New Hampshire (Mr. Langdon) has given his most decided opposition to the treaty; though in so doing, he left his friends in the senate in whom he had most confidence, and the party with which he had generally voted. As far as I have yet learned, not *one native American*, who in those trying times directed the councils of America, and is or has been unconnected with the present administration, has manifested a sentiment favorable to this disgraceful treaty. How little credit then must those advocates for it deserve, who endeavour to prop their miserable edifice, by representing its opponents as a factious few, and men ignorant of the great interests of their country?

To this *positive* evidence of the sense of Americans, upon this subject, may be added very important negative testimony, deduced from the character of its most steadfast supporters. Without having a reference to men in office (whose views it may be improper to explain) we find every British subject, and every man who has been uniformly hostile to American independence, on the side of the treaty. That a few others, who wish well to their country, have acquiesced in the measure, I am ready to acknowledge; attachment to party, personal friendship, a confidence in some on whom they are used to repose their political sentiments, family connection, will, in every question, have more or less influence. But as all these profess themselves decided friends to the constitution of the United States, I am persuaded that they will change their sentiments when they are convinced of the *unconstitutionality* of the treaty, of its being at war with every check, with every provision,



by which it guards against the intrusion of one branch upon the rights of another, and which, if suffered, would terminate in despotism.

It will be found that no ratification by the president and senate can carry this treaty into effect, without the concurrence of congress; nor, in some points, even with such concurrence, without the aid of the state legislatures.

No rule is better established, than, that in construing any legal instrument, the whole must be taken together; that if two different parts appear to militate against each other, such a construction, if possible, is to be given them, as to render each sensible without rejecting either; for it is absurd to suppose, that contradictions can be intended, or that unmeaning provisions would be purposely inserted. The constitution of the United States has defined the powers of its different branches—to the executive, it has given a power to make treaties; to the judiciary, a right to judge of *all cases* arising under such treaties; to congress, a right to regulate commerce with foreign nations and with the Indians, to define piracy, to *establish offices*, to settle the salary of officers, and to raise and appropriate money. These powers are perfectly distinct from each other, and may be all exercised without interference.—Thus the president and senate may make treaties of peace, of alliance, of neutrality, &c. but not such treaties as shall abridge the rights, either of congress or of the judiciary, as to those matters that are expressly reserved to them.

On the other hand, congress shall not interfere, in any treaties, as to those objects which are not expressly reserved to them; nor can they take from the judiciary the right to determine all questions arising on treaties, while such treaties remain in force. On any other construction, one branch of the constitution might possess itself of all the powers reserved to the others. Thus, if the power to make treaties includes a right to regulate commerce, to raise money, to declare war, to appoint officers and settle their salaries, to establish new courts and new rules of jurisprudence, to place in other hands, rights reserved to the judiciary of the United States, to naturalize foreigners, to define and punish piracy and other offences against the United States, then the president and senate, by combining with a foreign nation, can invest themselves with all power, and congress and the judiciary must become useless. If, for instance, the president and senate can agree that three British and two Americans, or vice versa, may draw money at their discretion out of the public treasury, they must, as incident to the power, have a right to appropriate public mo-

ney, to controul appropriations already made, and to fill the treasury, if empty, by taxes. For it would be absurd to say, that they have a right to give away public money, and yet that they have no money to give: a clear power always supposes every thing necessary to effectuate such power. If it is said, that they may stipulate for the payment of money; but that congress may or may not, at their discretion, raise and appropriate it to the use designated by such stipulation, then it will follow, that no treaty, which comprises powers reserved to congress, can be binding, until they give it their sanction: in such case, any ratification by the president and senate, until they obtain the assent of congress, must be nugatory; and as it may, also, involve us in disagreeable discussions with foreign powers, it must be intended that they have no right to such useless and perhaps dangerous ratifications. If, indeed, every article made a distinct treaty (which I believe will hardly be contended) then they might, without such assent, ratify those articles which did not interfere with the rights of congress, but as to all others they have no power. If, on the other hand, after a treaty is entered into, congress have no discretion, but must necessarily enact laws to carry it into effect, all the powers of government would be resolvable into the president and senate, and congress are a mere instrument in their hands. And to the millions Mr. Jay has already given away by the treaty, might be added, all the wealth of the United States. A treaty of commerce might tax even our exports in the face of the constitution; for surely if such a treaty can prohibit the exportation of certain commodities as the 12th article does, it might tax them, inasmuch as a prohibition involves greater power than taxation.

If they can create new crimes by treaty, and define the punishment of them, the whole criminal code is subjected to the will of the president and senate. If they can exempt a favorite nation from the operation of existing laws, they may impose burdens upon others: for to repeal a law is not less a legislative act than to make one. Their being able to effectuate this by treaty only, and not in ordinary cases, instead of diminishing, adds to the evil, and the danger the constitution would incur by this construction; since it would thereby enable them to call in a foreign power, to aid in their usurpations; and as such treaties might be kept secret till every necessary measure was taken to enforce them, all resistance to oppression would be vain; nor could the president or senate incur any risk by any attempt to seize all powers under pretence of a treaty, if we once admit that a right to make treaties includes every other

power of government. There are so many absurdities involved in these positions, that it becomes our duty to shew that they do not exist in the constitution, but are to be avoided by an easy and natural construction. First, it appears from the powers given to congress, that they are in every instance to retain their free agency, and cannot be compelled by any other branch of the government to do any act—the words of the constitution are, “congress shall have power;” then follows the enumeration of their powers. They cannot then be forced to raise money in consequence of any treaty, nor to do any other act, derogatory to the rights vested in them. The laws they have passed, or shall pass, in pursuance of such powers, remain in full force, notwithstanding any treaty the executive may form, derogatory to them; nor is there a word in the constitution that sets treaties above the laws of the United States; both together with the constitution itself, are called supreme laws, as contradistinguished to the laws of particular states only. The words in article VI. of the constitution are, “This constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. And the judges in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.” It will certainly not be pretended, that treaties are superior to the constitution, under which they are made; on the contrary, as it is held that laws themselves have no force in opposition to the constitution; so it may be inferred from the order in which they are placed, as well as the reason of the thing, that treaties are inferior in force to laws.—Were it otherwise, when a treaty was once ratified, however it might be abused, how destructive soever it might be to the United States in its operation, we never could get rid of it; because the judges, who are sworn to observe the laws, would enforce it. And yet there are many cases, enumerated by the writers on the law of nations, in which a treaty may be justifiably broken; and numberless reasons may exist with the sovereign of the country for violating it.

The only true and sound construction of the constitution is, that treaties are to have the force of laws; but, like all other laws, are subject to the will of the sovereign, that is, to congress; that the power of the president in making treaties, can only extend to cases that are *not reserved* by the constitution to congress; that whenever he negotiates as to other objects, his negotiations must be authorized by a prior or subsequent law. Though this construction may involve some *inconveniencies*, yet

it avoids *absurdities*. It gives force to every part of the constitution; it rejects no provisions in it, nor makes one part clash with another. It is consistent with the practice in mixed governments—thus, in Britain, the king may make treaties; but, when money is necessary to carry them into effect, when they clash with the laws of the nation, a legislative provision is necessary to give them effect. And the parliament can at any time make laws in the face of a treaty; though, until such laws are made, the treaty is respected by the courts. Whatever has been said with respect to the rights of the president and senate, as opposed to the exclusive rights of congress, applies with equal force to the rights of states; where the treaty is made relative to objects not surrendered by them, the treaty that is binding upon them, must be constitutionally made, and consist with the powers yielded to the federal government; otherwise the president might barter away the independence of individual states, which makes a necessary part of the constitution of the United States, and which is expressly guaranteed.

Now, let us apply these principles to the treaty—And to begin with the sixth article. By this article commissioners are to be appointed, two by the British king, two by the president and senate; the fifth by the other four, or by lot. These commissioners are to sit *as a court*, to determine questions relative to the demands of the British merchants—They are to examine the parties on oath, to fix their *own* rules of evidence, and to decide *not by the laws of the country*, but according to their ideas of justice and equity. Their decision is to be both *arbitrary and final*.

The first enquiry is into the *right* of the president and senate to appoint the commissioners contemplated by this article. If they have any such right, it must be derived from the constitution; for it will not be pretended that the king of Great Britain can give them new rights, or that they can enlarge their own power, by entering into a treaty with a foreign nation. Yet the only powers the president and senate have, relative to this object, are, to “appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein provided for, *and which shall be established by law*.” Here the officers that the executive may appoint, are *enumerated*; and so careful is the constitution to prevent their using any improper discretion, in the creation of unnecessary officers, that it expressly limits the powers of appointment as to all others, *to such as shall be established by law*. The only question, then, is, whether the commissioners contemplated by the treaty are in

the class of enumerated officers—They are not ambassadors, consuls, judges of the supreme court, nor are they *established by law*. To say that the treaty is a law, and that therefore all officers established by treaty, are established by law, would only be to argue in a circle, and to go back to the point we started from. It would be to assert, that every thing might be done by treaty, which could be done by law; and, as I have before said, that under the form of a treaty, the president and senate might assume all powers, legislative, executive, and judiciary. The question then is, whether they are the *public ministers* contemplated by the constitution? It is evident, from the words *public ministers*, following the word *ambassadors*, and preceding the word *consuls*, that diplomatic ministers only could be intended; since it takes the highest and lowest of these, and uses general words to “other public ministers,” to designate the various intermediate grades. But surely, commissioners, who are to hold their sessions in our own country, and to determine questions of private jurisprudence, cannot in this sense be denominated public ministers; as well might we call the auditor a public minister, because he settles the accounts of strangers and citizens; or the attorney general, whose duty it is to see that the subjects of foreign princes are not maltreated. In one sense, indeed, not only they, but every other officer of the state, is a public minister; but that this is not the sense of the constitution, is evident from its enumerating certain public officers, as, for instance, judges of the supreme court (who, in this extensive sense, are also *public ministers*) and from its conferring the right of appointment, as to all others; “to such as shall be *established by law*,” it is evident, that the constitution must have affixed some specific idea to the words “other public ministers.” What that idea was, appears clearly from the context; and it would be the grossest abuse, to extend it to a species of officers that never existed either in this, nor, as I believe, in any other country in the world. In the third section, the same idea is still pursued—“He shall receive ambassadors and other public ministers.”

The constitution also preserves a right to vest the appointment of officers (other than those enumerated) either in the president *alone*, the *courts of law*, or the *heads of departments*. By what authority, then, can Mr. Jay and Lord Grenville, or the president and senate, over-rule the constitution, and assume a power to controul the rights of congress, to create the office, and to place it in such hands as they think proper, under the above limitations? But such are the powers of these commissioners, as even congress itself cannot authorize, without.

violating the constitution.—They are to determine upon certain rights, which British subjects claim *under the treaty of Paris*, which was an existing treaty at the time the constitution was acceded to; of course, must have been in contemplation when the second section of the third article of the federal constitution declared, “that the judicial power *shall* extend to ALL CASES in *law and equity* arising under this constitution, the laws of the United States, and *treaties made*, or which *shall be made*, under their authority.” “In all cases of admiralty and maritime jurisdiction, to controversies to which the *United States shall be a party*.”

Now, let me ask, whether the cases that are to fall under the jurisdiction of these commissioners are not, 1st, A case under a *treaty made*? and 2d, whether the United States are not parties? What power then exists either in the president and senate, or even in the legislature, to assume this right; which the union has vested in a judiciary, whom it has expressly declared to be independent of both: Or will it be said, that the power of making treaties, implies a right to trample under foot every check that the constitution has provided against the abuses of either branch of government? Should the treasurer of the United States pay money out of the treasury in pursuance of any adjudication of these commissioners, and be afterwards called to an account for the same, before the judges of the supreme court, could he expect that they would suffer him to issue an order which clashes with their own powers and derogates from the constitution? I know that inconveniencies may arise from there not existing a power in the United States to determine controversies arising under treaties by the intervention of commissioners; I know also, that great security is derived from having the true construction of them determined by the courts, and preventing the misapplication of public money, by leaving the disposition of it to tribunals that are bound by none of the solemn forms of law: Whether the inconvenience does or does not over-balance these advantages, is at present out of the question. It is sufficient for me, and should be for the executive, that such is the constitution: If it is defective, let it be amended; but while it exists, it is sacred.

The eighth article also provides for the *payment* of this high commission court, and settles, that their *salaries* and expenses shall be regulated by treaty; so that the president and the senate are not only to appoint officers unknown to, and in the face of, the constitution, but to assume a right which they never yet have presumed to exercise, even where the officers were *legally* appointed, that of fixing their salaries—and this too in concurrence with his Britannic majesty.

C A T O.

[TO BE CONTINUED.]

## Defence of Mr. Jay's Treaty.

[CONTINUED FROM PAGE 199.]

No. XII.

THE remaining allegations, in disparagement of the third article, are to this effect—1. That the exception of the country of the Hudson's Bay company, owing to its undefined limits, renders the stipulations in our favor, in a great measure, nugatory. 2. That the privileges granted to Great Britain in our Mississippi ports, are impolitic, because without reciprocity. 3. That the agreement to forbear to lay duties of entry on peltries, is the surrender, without equivalent, of a valuable item of revenue, and will give the British the facility of carrying on their fur trade through us, with the use of our advantages. 4. That the articles, which will be brought from Europe into Canada, coming duty free, can be afforded cheaper than the same articles going thither from us, charged with a heavy duty on their importation into the United States, and with the expense of a long transportation by land, and inland navigation. 5. That the population of Canada, which, by a census in 1784, amounted only to 123,082 souls, is too small to render the supply of European and Asiatic commodities, through us, of so much importance as to bear any comparison with the loss by the sacrifice of the fur trade. 6. That the intercourse to be permitted with the British territories will facilitate smuggling, to the injury of our revenue. 7. That the much greater extent of the United States than of the British territories, destroys real reciprocity in the privileges granted by this article, giving, in fact, far greater advantages than are received. These suggestions will be discussed in the order in which they are here stated:—

1. It is true, that the country of the Hudson's Bay company is not well defined. Their charter, granted in 1670, gives them "the sole trade and commerce of and to all the seas, bays, streights, creeks, lakes, rivers, and sounds, in whatsoever latitude they shall be, that lie within the entrance of the streights commonly called Hudson's Streights, together with all the lands, countries, and territories upon the coasts and confines of the said seas, streights, bays, &c. *which are now actually possessed by any of our subjects, or by the subjects of any other Christian prince or state.*"

To ascertain their territorial limits, according to charter, it would be necessary to know what portion of country, at the time of the grant, was *actually possessed* by the subjects of Great Britain, or of some other Christian prince or state; but though this be not known, the general history of the country, as to settlement, will demonstrate, that it could not have extended far westward, certainly not to that region which is the scene of trade in furs, commonly called the north west trade, carried on by the Canada company from Canada; the possession of which, as far as possession exists, is recent. We learn from a traveller who has lately visited that region, that one of this company's establishments is in lat. 56, 9, N. long. 117, 43, W. that is, about 20 degrees of longitude westward of the lake of the Woods; and it is generally understood, that the entire scene of the trade of this company is westward of the limits of the Hudson's Bay company.

Canada, on the north, is bounded by the territories of the Hudson's Bay company.—This is admitted by the treaty of Utrecht, and established by the act of parliament in 1774, commonly called the Quebec act.—The treaty of Utrecht provides for the settlement of the boundaries by commissaries. I have not been able to trace whether the line was ever actually so settled; but several maps lay down a line as the one settled by the treaty of Utrecht, which runs north of the lake of the Woods.

In a case thus situated, the United States will justly claim, under the article, access to all that country, the trade of which is now carried on through Canada. This will result both from the certainty that there were no actual possessions, at the date of the charter, so far interior, and from the fact of the trade being carried on through a different channel, by a different company, under the superintendence and protection of a different government, that of Canada. It may be asked, why was the article embarrassed by the exception of the country of the Hudson's Bay company? The answer is this, That the charter of this company gives to it a monopoly within its limits, and, therefore, a right to trade there could not have been granted, with propriety, to a foreign power, by treaty. It is true that it has been questioned, whether this monopoly was valid against British subjects, seeing that the charter had not been confirmed by act of parliament. But besides that this doubt has been confined to British subjects, it would appear, that, in fact, the company has enjoyed the monopoly granted by its charter, even against them, and with at least the implied approbation of parliament. In the year 1749, petitions were preferred to the



house of commons, by different trading towns in England, for rescinding the monopoly, and opening the trade.—An enquiry was instituted by the house. The report of its committee was favorable to the conduct and pretensions of the company, and against the expediency of opening the trade; and the business terminated there.

This circumstance of there being a monopoly, confirms the argument drawn from the fact, that the north west trade is carried on through Canada by the Canada company: a decisive presumption, that the scene of that trade is not within the country of the Hudson's Bay company, and is, consequently, within the operation of the privilege granted to us.

Though it will be partly a digression, I cannot forbear, in this place, to notice some observations of CATO, in his Xth number—After stating, that in 1784 the peltry from Canada sold in London for 230,000*l.* sterling, he proceeds to observe, that, excluding the territories of the Hudson's Bay company, nine-tenths of this trade is within the limits of the United States; and, though with studied ambiguity of expression, he endeavours to have it understood, that nine-tenths of the trade which yielded the peltry, that sold for 230,000*l.* sterling in 1784, was within our territories. It is natural to ask, how he has ascertained the limits of the Hudson's Bay company (which, at other times, is asserted, by way of objection to the article, to be altogether indefinite) with so much exactness as to be able to pronounce what proportion, if any, of the trade carried on through Canada may have come from that country, towards the calculation which has led to the conclusion, that nine-tenths of the whole lies within our limits? The truth is indubitably and notoriously, that whether any or whatever part of the peltry exported from Canada may come from the country of the Hudson's Bay company, seven-eighths\* of the whole trade which furnishes that peltry, has its source on the British side of the boundary line. It follows, that if it were even true, that only one-tenth of the whole lay in that part of the British territory, which is not of the Hudson's Bay company, inasmuch as only one-seventh of it lies within our limits, the result would be, that the trade, in which we granted an equal privilege, was to that in which a like privilege is granted to us, as one-seventh to one-tenth, and not, according to Cato, as nine to one. This *l'gerdemain*, in argument and calculation, is really too frivolous for so serious a subject. Or, to speak more properly, it is too shocking, by the spirit of deception which it

\* Some statements rate it between six-eighths and seven-eighths.

betrays. Cato has a further observation, with regard to the trade with the Indians, in the vicinity of the Mississippi, and from that river into the Spanish territories.—The product of all this trade, he says, must go down the Mississippi, and, but for the stipulation of the third article, would have been exclusively ours; because, “by the treaty of Paris, though the British might navigate the Mississippi, yet they did not own a foot of land upon either of its banks; whereas the United States possessing all the Indian country, in the vicinity of that river and the east bank for many hundred miles, could, when they pleased, establish factories and monopolize that commerce.” This assertion, with regard to the treaty of Paris, is in every sense incorrect; for the seventh article of that treaty, establishes as a boundary between the dominions of France and his Britannic majesty, “a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Pont Chartrain to the sea,” and cedes to his Britannic majesty all the country on the east side of the Mississippi. By the treaty of Paris then, his Britannic majesty owned all, except the town and island of New Orleans, the territory on the east side of the Mississippi, instead of not having a foot of land there.

What part of this territory does not still belong to him, is a point not yet settled. The treaty of peace between the United States and Great Britain, supposes that part will remain to Great Britain; for one line of boundary between us and her, designated by that treaty is a line due west from the lake of the woods to the Mississippi. If, in fact, this river runs far enough north to be intersected by such a line, according to the supposition of the last mentioned treaty, so much of that river, and the land upon it, as shall be north of the line of intersection, will continue to be of the dominion of Great Britain. The lately-made treaty, not abandoning the possibility of this being the case, provides for a survey to ascertain the fact; and in every event, the intent of the treaty of peace will require, that some closing line, more or less direct, shall be drawn from the lake of the Woods to the Mississippi. The position therefore, that Great Britain has no land or ports on the Mississippi, takes for granted, what is not ascertained, and of which the contrary is presumed by the treaty of peace.

The trade with the Indian country on our side of the Mississippi, from the Ohio to the lake of the Woods (if that river extends so far north) some fragments excepted, has its present direction through Detroit and Michillimachineac, and is in-

cluded in many calculations, heretofore stated, of the proportion which the Indian trade within our limits, bears to that within the British limits. Its estimated amount is even understood to embrace the proceeds of a clandestine trade with the Spanish territories; so that the new scene suddenly explored by Cato, is old and trodden ground, the special reference to which cannot vary the results that have been presented. It is still unquestionably and notoriously true, that the fur trade within our limits, bears no proportion to that within the British limits. As to a contingent traffic with the territories of Spain, each party will be free to pursue it according to right and opportunity; each would have, independent of the treaty, the facility of bordering territories. The geography of the best regions of the fur trade, in the Spanish territories, is too little known, to be much reasoned upon; and if the Spaniards, according to their usual policy, incline to exclude their neighbours, their precautions along the Mississippi will render the access to it circuitous: a circumstance which makes it problematical, whether the possession of the opposite bank is, as to that object, an advantage or not, and whether we may not find it convenient to be able, under the treaty, to take a circuit through the British territories.

2. It is upon the suggestion of Great Britain having no ports on the Mississippi, that the charge of want of reciprocity in the privileges granted, with regard to the use of that river, is founded. The suggestion has been shown to be more peremptory than is justified by facts. Yet it is still true, that the ports on our side bear no proportion to any that can exist on the part of the British, according to the present state of territory. It will be examined in a subsequent place, how far this disproportion is a proper rule in the estimate of reciprocity. But let it be observed, in the mean time, that in judging of the reciprocity of an article, it is to be taken collectively. If, upon the whole, the privileges obtained, are as valuable as those granted, there is a substantial reciprocity; and to this test, upon full and fair examination of the article, I freely refer the decision. Besides, if the situation of Great Britain did not permit in this particular, a precise equivalent, it will not follow that the grant on our part was improper, unless it can be shown, that it was attended with some inconvenience, injury, or loss to us; a thing which has not been, and I believe cannot be shown. Perhaps there is a very importantly beneficial side to this question. The treaty of peace established between us and Great Britain, a common interest in the Mississippi; the present treaty strengthens that common interest. Every body knows, that the use of the river is denied so by Spain, and that it is an indispensable outlet to

our western country. Is it an inconvenient thing to us, that the interest of Great Britain has, in this particular, been more completely separated from that of Spain and more closely connected with ours?

3. The agreement to forbear to lay duties of entry on peltries, is completely defensible on the following grounds, viz. It is the general policy of commercial nations to exempt raw materials from duty. This has likewise been the uniform policy of the United States; and it has particularly embraced the article of *peltries*, which, by our existing laws, may be imported into any part of the United States *free from duty*. The object of this regulation is the encouragement of manufactures, by facilitating a cheap supply of raw materials. A duty of entry, therefore, as to such part of the article as might be worked up at home, would be prejudicial to our manufacturing interest; as to such part as might be exported, if the duty was not drawn back, would injure our commercial interest. But it is the general policy of our laws, in conformity with the practice of other commercial countries, to draw back and return the duties which are charged upon the importation of foreign commodities. This has reference to the advancement of the export trade of the country; so that, with regard to such peltries as should be re-exported, there would be no advantage to our revenue from having laid a duty of entry. Such a duty, then, being contrary to our established system and to true principles, there can be no objection to a stipulation against it.—As to its having the effect of making our country the channel of the British trade in peltries, this, if true, and it is indeed probable, could not but promote our interest. A large proportion of the profits would then necessarily remain with us, to compensate for transportation and agencies. It is likely, too, that to secure the fidelity of agents, as is usual, copartnerships would be formed, of which British capital would be the principal instrument, and which would throw a still greater proportion of the profits into our hands. The more we can make our country the entrepot, the emporium of the trade of foreigners, the more we shall profit. There is no commercial principle more obvious than this, more universally agreed, or more generally practised upon, in countries where commerce is well understood.

4. The fourth of the above enumerated suggestions, is answered, in its principal point, by the practice just stated, of drawing back the duties on importation, when articles are re-exported. This would place the articles, which we should send into the British territories, exactly upon the same footing, as

to duties, with the same articles imported there from Europe. With regard to the additional expense of transportation, this is another instance of the contradiction of an argument, which has been relied upon by both sides, which is, that taking the voyage from Europe in conjunction with the interior transportation, the advantage, upon the whole, is likely to be in our favor. And it is upon this aggregate transportation, that the calculation ought to be made. With respect to India or Asiatic articles, there is the circumstance of a double voyage.

5. As to the small population of Canada, which is urged to depreciate the advantages of the trade with the white inhabitants of those countries, it is to be observed, that this population is not stationary. If the date of the census be rightly quoted, it was taken eleven years ago, when there were already 123,082 souls. It is presumable, that this number will soon be doubled; for it is notorious, that settlement has proceeded for some years with considerable rapidity in Upper Canada; and there is no reason to believe that the future progress will be slow. In time to come, the trade may grow into real magnitude; but be it more or less beneficial, it is so much gained by the article; and so much clear gain, since it has been shown not to be true, that it is counterbalanced by a sacrifice in the fur trade.

6. With regard to the supposed danger of smuggling, in the intercourse permitted by this article, it is very probable, it will be found less than if it were prohibited. Entirely to prevent trade between bordering territories is a very arduous, perhaps an impracticable task. If not authorized, so much as is carried on must be illicit; and it may be reasonably presumed, that the extent of illicit trade will be much greater in that case, than where an intercourse is permitted, under the usual regulations and guards. In the last case, the inducement to it is less, and such as will only influence persons of little character or principle, while every fair trader is, from private interest, a sentinel to the laws; in the other case, all are interested to break through the barriers of a rigorous and apparently unkind prohibition. This consideration has probably had its weight with our government in opening a communication through lake Champlain with Canada; of the principle of which regulation, the treaty is only an extension.

7. The pretended inequality of the article, as arising from the greater extent of the United States than of the British territories, is one of those fanciful positions, which are so apt to haunt the brains of visionary politicians. Traced through all its consequences, it would terminate in this, that a great em-

pire could never form a treaty of commerce with a small one; for, to equalize advantages according to the scale of territory, the small state must compensate for its deficiency in extent, by a greater *quantum* of positive privilege, in proportion to the difference of extent, which would give the larger state the monopoly of its trade. According to this principle, what wretched treaties have we made with France, Sweden, Prussia, and Holland! For our territories exceed in extent those of either of these powers. How immense the sacrifice in the case of Holland; for the United States are one hundred times larger than the United Provinces.

But how are we sure, that the extent of the United States is greater than the territories of Great Britain on our continent? We know that she has pretensions to extend to the Pacific Ocean, and to embrace a vast wilderness, incomparably larger than the United States, and we are told, as already mentioned, that her trading establishments now actually extend beyond the 56th degree of north latitude, and 117th degree of west longitude.

Shall we be told (shifting the original ground) that not extent of territory, but extent of population is the measure? Then how great is the advantage which we gain in this particular, by the treaty at large? The population of Great Britain is to that of the United States, about two and a half to one; and the comparative concession by her in the trade between her European dominions and the United States, must be in the same ratio. When we add to this the great population of her East India possessions, in which privileges are granted to us, without any return, how prodigiously will the value of the treaty be enhanced, according to this new and extraordinary rule!

But the rule is, in fact, an absurd one, and only merits the notice which has been taken of it, to exhibit the weak grounds of the opposition to the treaty. The great standard of reciprocity is equal privilege. The adventitious circumstances, which may render it more beneficial to one party than the other, can seldom be taken into the account, because they can seldom be estimated with certainty; the relative extent of country or population, is of all others, a most fallacious guide.

The comparative resources and facilities for mutual supply, regulate the relative utility of a commercial privilege; and as far as population is concerned, it may be laid down, as a general rule, that the smallest population graduates the scale of the trade on both sides, since it is at once the principal measure of what the smaller state can furnish to the greater, and of what it can take from the greater; or, in other words, of what the

greater state can find a demand for in the smaller state. But this rule, too, like most general ones, admits of numerous exceptions.

In case of a trade by land and inland navigation, the sphere of the operation of any privilege can only extend a certain distance. When the distance to a given point, through a particular channel, is such that the expense of transportation would render an article dearer than it could be brought through another channel to the same point, the privilege to carry the article through that particular channel to such point, becomes of no avail. Thus the privilege of trading by land or inland navigation from the British territories on this continent, can procure to that country no advantage of trade with Princeton in New-Jersey, because supplies can come to it on better terms from other quarters. Whence we perceive, that the absolute extent of territory or population of the United States, is no measure of the relative value of the privileges reciprocally granted by the article under consideration, and, consequently, no criterion of the real reciprocity of the article.

The objectors to the treaty have marshalled against this article a quaint figure, of which from the use of it in different quarters, it is presumable they are not a little enamoured; it is this, that the article enables Great Britain to draw *a line of circumvallation* round the United States. They hope to excite prejudice, by presenting to the mind, the image of a siege or investment of the country. If trade be war, they have chosen a most apt figure; and we cannot but wonder, how the unfortunate island of Great Britain, has been able so long to maintain her independence amidst the beleaguering efforts of the number of nations with whom she has been imprudent enough to form treaties of commerce; and who, from her insular situation, have it in their power to beset and hem her in on all sides. How lucky it is for the United States, that at least one side is covered by Spain, and that this formidable line of circumvallation cannot be completely perfected! or rather how hard driven must those be, who are obliged to call to their aid, auxiliaries so preposterous!

Can any good reason be given, why one side of a country should not be accessible to foreigners, for purposes of trade, equally with another? Might not the cultivators on the side from which they were excluded, have cause to complain, that the carriage of their productions was subject to an increased charge, by a monopoly of the national navigation; while the cultivators in other quarters enjoyed the benefit of a competition between that and foreign navigation? and might not all the inhabitants have a right to demand a reason, why their

commerce should be less open and free, than that of other parts of the country? Will privileges of trade extend the line of territorial circumvallation? Will not the extent of contiguous British territory remain the same, whether the communications of trade are open or shut? By opening them, may we not rather be said to make so many breaches in the wall, or intrenchment, of this newly invented circumvallation? if indeed it be not enchanted!

The argument upon this article, has hitherto turned, as to the trade with the white inhabitants of the British territories on European and East India goods. But there can be no doubt that a mutually-beneficial commerce in native commodities ought to be included in the catalogue of advantages. Already there is a useful interchange of certain commodities, which time and the progress of settlement and resources cannot fail to extend. It is most probable, too, that a considerable part of the productions of the British territories will find the most convenient channel to foreign markets through us; which, as far as it regards the interest of external commerce, will yield little less advantage, than if they proceeded from our own soil or industry. It is evident, in particular, that as far as this shall be the case, it will prevent a great part of the competition with our commodities which would exist, if those productions took other routes to foreign markets.

In considering the subject, on the side of a trade in home commodities, it is an important reflection, that the United States are much more advanced in industrious improvement, than the British territories. This will give us a material and growing advantage. While their articles of exchange with us will essentially consist in the products of agriculture and of mines, we shall add to these, manufactures of various and multiplying kinds, serving to increase the balance in our favor.

In proportion as the article is viewed on an enlarged plan and permanent scale, its importance to us magnifies. Who can say how far British colonization may spread southward and down the west side of the Mississippi, northward and westward into the vast interior regions towards the Pacific Ocean? Can we view it as a matter of indifference, that this new world is eventually laid open to our enterprize, to an enterprize seconded by the immense advantage already mentioned, of a more improved state of industry? Can we be insensible, that the precedent furnishes us with a cogent and persuasive argument to bring Spain to a similar arrangement? And can we be blind to the great interest we have, in obtaining a free communica-



tion with all the territories that environ our country, from the St. Mary's to the St. Croix.

In this large view of the subject, the fur trade, which has made a very prominent figure in the discussion, becomes a point scarcely visible. Objects of great variety and magnitude, start up in perspective, eclipsing the little atoms of the day, and promising to grow and mature with time.

The result of the whole is, that the United States, make by the third article of the treaty a good bargain—that with regard to the fur trade, with equality of privileges and superior advantages of situation, we stake one against seven, or at most one against six—that as to the trade in European and East Indian goods and in home productions, we make an equal stake with some advantages of situation—that we open an immense field of future enterprize—that we avoid embarrassments and dangers ever attendant on an artificial and prohibitory policy, which, in reference to the Indian nations, was particularly difficult and hazardous—and that we secure those of a natural and liberal policy, and give the fairest chances for good neighbourhood between the United States and the bordering British territories, and consequently of good understanding with Great Britain, conducing to the security of our peace. Experience, no doubt, will demonstrate that the horrid spectres which have been conjured up, are fictions; and if it should even be slow to realize the predicted benefits (for time will be requisite to give permanent causes their due effect in controuling temporary circumstances) it will at last prove, that the predicted evils are chimeras and cheats.

CAMILLUS.

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No. XIII.

THE fourth and fifth articles of the treaty, from similarity of object, will naturally be considered together. The fourth, reciting a doubt, "whether the river Mississippi extends so far north-westward, as to be intersected by a line drawn due west from the lake of the Woods, in the manner mentioned by the treaty of peace," agrees, that measures shall be taken in concert between the two governments, to make a joint survey of that river, from a degree of latitude below the

falls of St. Anthony, to the principal source or sources thereof, and of the parts adjacent thereto; and that if in the result it should appear that the said river would not be intersected by such a line as above mentioned, the two parties will proceed by amicable negotiation, to regulate the boundary line in that quarter as well as all other points to be adjusted between them, according to justice and mutual convenience, and the intent of the treaty of peace. The fifth, reciting that doubts have arisen, what river was truly intended under the name of the river St. Croix, mentioned in the treaty of peace, and forming a part of the boundary therein described, provides that the ascertainment of the point shall be referred to three commissioners, to be appointed thus: one to be named by his Britannic majesty, another by the president of the United States, with the advice and consent of the senate, the third by these two, if they can agree in the choice; but if they cannot agree, then each of them to name a person, and out of the persons named, one drawn by lot in their presence to be the third commissioner—These commissioners are to meet at Halifax, with power to adjourn to any place or places they may think proper—are to be sworn to examine and decide the question according to the evidence which shall be laid before them by both parties—and are to pronounce their decision, which is to be conclusive, by a written declaration under their hands and seals, containing a description of the river and particularly the latitude and longitude of its mouth and of its source.

These articles, though they have been adjusted with critical propriety, have not escaped censure. They have even in one instance been severely reprobated, as bringing into question, things about which there was no room for any—and which a bare inspection of the map was sufficient to settle.

With regard to the Mississippi, there is no satisfactory evidence that it has ever been explored to its source.—It is even asserted, that it has never been ascended beyond the 45th degree of north latitude, about a degree above the falls of St. Anthony. Fadeus's map in 1793, will serve as a specimen of the great uncertainty which attends this matter. It notes that the river had not been ascended beyond the degree of latitude just mentioned, and exhibits three streams, one connected with the *Marsby Lake* in that latitude, another with the *White Bear Lake* near the 46th degree, and the third with the *Red Lake* in the 47th degree; denominating each of the two first, "the Mississippi by conjecture," and the last, "Red Lake River, or Laboutan's Mississippi,"—all of them falling considerably

short, in their northern extent, of the lake of the Woods, which is placed as high as the fiftieth degree of north latitude. Thus stands this very clear and certain point, which, we are told, it was disgraceful on the part of our envoy to have suffered to be brought into question.

There is, however, a specific topic of blame of the article which has greater plausibility. It is this, that it does not finally settle the question, but refers the adjustment of the closing line to future negotiation, in case it should turn out that the river does not stretch far enough north to be intersected by an east and west line from the lake of the Woods. I answer, that the arrangement is precisely such as it ought to have been. It would have been premature to provide a substitute till it was ascertained that it was necessary—This could only be done by an actual survey—A survey is therefore provided for and will be made at the joint expense of the two countries.

That survey will not only determine whether a substitute be requisite or not; but it will furnish data for judging what substitute is proper, and most conformable to the true intent of the treaty.—Without the data which it will afford, any thing that could have been done, would have been too much a leap in the dark. National acts, especially on the important subject of boundary, ought to be bottomed on a competent knowledge of circumstances. It ought to be clearly understood how much is retained, how much is relinquished. Had our envoy proceeded on a different principle, if what he had agreed to had turned out well, it would have been regarded as the lucky result of an act of supererogation—If it had proved disadvantageous, it would have been stigmatized as an act of improvidence and imprudence.

The strong argument for having settled an alternative is the avoiding of future dispute. But what alternative could have been agreed upon, which might not have bred controversy? The closing line must go directly or indirectly to the Mississippi—which of the streams reputed or conjectured to be such, above the falls of St. Anthony, is best entitled to be so considered? To what known point was the line to be directed? How was that point to be identified with adequate certainty? The difficulty of answering these questions, will evince, that the danger of controversy might have been increased by an impatience to avoid it, and by anticipating, without the necessary lights, an adjustment which they ought to direct.

The facts, with regard to the river St. Croix, are these: the question is, which of two rivers is the true St. Croix. The dispute concerning it is as old as the French possession of Nova

Scotia. France set up one river; Great Britain another. The point was undecided when the surrender of Nova Scotia by the former to the latter, put an end to the question as between those parties—It was afterwards renewed between the colonies of Nova Scotia and Massachusetts Bay, which last, in the year 1762, appointed commissioners to ascertain, in conjunction with commissioners which might be appointed by the province of Nova Scotia, the true river, but no final settlement of the matter ensued.

The treaty of peace gives us for one boundary, the river St. Croix, but without designating it. Hence it has happened, that not long after the peace was concluded, the question, which had been before agitated between France and Great Britain, and between the provinces of Massachusetts and Nova Scotia, was revived between the state of Massachusetts and that province, and it has ever since continued a subject of debate.

A mode of settling the dispute was under the consideration of congress in the year 1785; and powers were given to our then minister at the court of London, to adjust the affair, but nothing was concluded. And we learn from a letter of Mr. Jefferson to Mr. Hammond, dated the 15th December, 1791, that it then also, engaged the attention of our government; that the ascertaining of the point in dispute was deemed a matter of "present urgency," and that it had before been the subject of application from the United States to the government of Great Britain.

It is natural to suppose, that a dispute of such antiquity, between such different parties, is not without colourable foundation on either side: at any rate, it was essential to the preservation of peace that it should be adjusted.

If one party could not convince the other by argument, of the superior solidity of its pretensions, I know of no alternative but arbitration or war. Will any one pretend that honor required us in such a case to go to war, or that the object was of a nature to make it our interest to refer it to that solemn, calamitous, and precarious issue? No rational man will answer this question in the affirmative. It follows, that an arbitration was the proper course, and that our envoy acted rightly in acceding to this expedient. It is one, too, not without precedents among nations, though it were to be wished, for the credit of human moderation, that they were more frequent.

Is there any good objection to the mode of the arbitration? It seems impossible, that any one more fair or convenient could have been devised, and it is recommended by its analogy to what is common among individuals.

What the mode is, has been already detailed, and need not be repeated here. It is objected, that too much has been left to chance; but no substitute has been offered, which would have been attended with less casualty. The fact is, that none such can be offered.—Conscious of this, those who make the objection have not thought fit to give an opportunity of comparison by proposing a substitute. What is left to chance? Not that there shall be a final decision; for this is most effectually provided for. It is not only positively stipulated that commissioners, with full and definitive power, shall be appointed, but an ultimate choice is secured, by referring, in the last resort, to a decision *by lot*, what it might not be practicable to decide by agreement. This is the *ne plus ultra* of precaution. Is it that this reference to lot leaves it too uncertain of what character or disposition the third commissioner may be? If this be not rather a recommendation of the fairness of the plan, how was it to be remedied? Could it have been expected of either of the parties, to leave the nomination to the other? Certainly not. Would it have been advisable to have referred the ultimate choice to some other state or government? Where would one have been found, in the opinion of both parties, sufficiently impartial? On which side would there have been the greatest danger of a successful employment of undue influence? Is it not evident, that this expedient would have added to equal uncertainty, as to character and disposition, other casualties and more delay? Should it have been left to the two commissioners, appointed by the parties to agree at all events? It might have been impossible for them to come to an agreement, and then the whole plan of settlement would have been frustrated. Would the sword have been a more certain arbiter? Of all uncertain things, the issues of war are the most uncertain. What do objections of this kind prove, but that there are persons resolved to object at all events?

The submission of this question to arbitration has been represented as an eventual dismemberment of empire, which, it has been said, cannot rightly be agreed to, but in a case of extreme necessity. This rule of extreme necessity is manifestly only applicable to a cession or relinquishment of a part of a country, held by a clear and acknowledged title; not to a case of disputed boundary.

It would be a horrid and destructive principle, that nations could not terminate a dispute about the title to a particular parcel of territory, by amicable agreement, or by submission to arbitration as its substitute; but would be under an indispensable obligation to prosecute the dispute by arms, till real danger to

the existence of one of the parties should justify, by the plea of extreme necessity, a surrender of its pretensions.

Besides, the terms in which writers lay down the rule, and the reason of it, will instruct us that where it does apply, it relates not to territory as such, but to those who inhabit it, on the principle that the social compact entitles all the members of the society to be protected and maintained by the common strength in their rights and relations as members. It is understood, that the territory between the two rivers in dispute, is either uninhabited, or inhabited only by settlers under the British. If this be so, it obviates all shadow of difficulty on our side. But be it as it may, it would be an abuse of the rule, to oppose it to the amicable adjustment of an ancient controversy, about the title to a particular tract of country, depending on a question of fact, whether this or that river be the one truly intended by former treaties between the parties. The question is not, in this case, shall we cede a part of our country to another power? It is this—To whom does this tract of country truly belong? Should the weight of evidence be on the British side, our faith, pledged by the treaty, would demand from us an acquiescence in their claim. Not being able to agree in opinion on this point, it was most equitable and most agreeable to good faith to submit it to an impartial arbitration.

It has been asked, among other things, whether the United States were competent to the adjustment of the matters without the special consent of the state of Massachusetts. Reserving a more particular solution of this question to a separate discussion of the constitutionality of the treaty, I shall content myself with remarking here, that our treaty of peace with Great Britain, by settling the boundaries of the United States without the specific consent or authority of any state, assumes the principle, that the government of the United States was of itself competent to the regulation of boundary with foreign powers—that the actual government of the Union has even more plenary authority with regard to treaties, than was possessed under the confederation, and that acts, both of the former and of the present government, presuppose the competency of the national authority to decide the question in the very instance under consideration. I am informed, also, that the state of Massachusetts has, by repeated acts, manifested a corresponding sense on the subject.

A reflection not unimportant occurs here. It was perhaps, in another sense than has been hitherto noticed, a point of prudence in both governments to refer the matter in dispute to arbitration. If one had yielded to the pretensions of the other, it

could hardly have failed to draw upon itself complaints, and censures, more or less extensive, from quarters immediately interested or affected.

CAMILLUS.

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No. XIV.

**T**HE sixth article stipulates compensation to British creditors for losses and damages which may have been sustained by them, in consequence of certain legal impediments, which, since the treaty of peace with Great Britain, are alleged to have obstructed the recovery of debts *bona fide* contracted with them before the peace.

To a man who has a due sense of the sacred obligation of a just debt, a proper conception of the pernicious influence of laws which infringe the rights of creditors, upon morals, upon the general security of property, upon public as well as private credit, upon the spirit and principles of good government; who has an adequate idea of the sanctity of the national faith, explicitly pledged—of the ignominy attendant upon a violation of it in so delicate a particular as that of private pecuniary contracts—of the evil tendency of a precedent of this kind to the political and commercial interests of the nation generally—every law which has existed in this country, interfering with the recovery of the debts in question, must have afforded matter of serious regret and real affliction. To such a man, it must be among the most welcome features of the present treaty, that it stipulates reparation for the injuries which laws of that description may have occasioned to individuals, and that, as far as is now practicable, it wipes away from the national reputation the stain which they have cast upon it. He will regard it as a precious tribute to justice, and as a valuable pledge for the more strict future observance of our public engagements; and he would deplore as an ill-omened symptom of the depravation of public opinion, the success of the attempts which are making to render the article unacceptable to the people of the United States. But of this there can be no danger. The spontaneous sentiments of equity, of a moral and intelligent people, will not fail to sanction, with their approbation, a measure which could not have been resisted without inflicting a new wound upon the honor and character of the country.

Let those men who have manifested by their actions, a willing disregard of their own obligations as debtors—those who

secretly hoard, or openly and unblushingly riot on the spoils of plundered creditors, let such men enjoy the exclusive and undivided satisfaction of arraigning and condemning an act of national justice, in which they may read the severest reproach of their iniquitous principles and guilty acquisitions. But let not the people of America tarnish their honor by participating in that condemnation, or by shielding with their favorable opinion, the meretricious apologies which are offered for the measures that produced the necessity of reparation.

The recapitulation of some facts will contribute to a right judgment of this part of the treaty.

It is an established principle of the laws of nations, that, on the return of peace between nations which have been at war, a free and undisturbed course shall be given to the recovery of private debts on both sides.\* In conformity to this principle, the 4th article of the treaty of peace between the United States and Great Britain, expressly stipulates, "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts theretofore contracted."

Two instances of the violation of this article have been already noticed, with a view to another point; one relating to certain laws of the state of Virginia, passed prior to the peace, which, for several years after it, appears to have operated to prevent the legal pursuit of their claims by British creditors. Another, relating to a law of the state of South Carolina, which suspended the recovery of the debts for nine months, and after that period permitted the recovery only in four years instalments.

But these were not all the instances; there were other laws of South Carolina prolonging the instalments, and obliging the creditors to receive in payment the property of debtors at appraised values; and there were laws of Rhode Island, New Jersey, North Carolina, and Georgia, making paper money a legal tender for the debts of those creditors; which, it is known, sustained a very great depreciation in every one of those states. These very serious and compulsory interferences with the rights of the creditors, have received from Decius, the soft appellation of a modification of the recovery of British debts. Does he expect to make us believe, by this smooth phrase, that the right to recover the full value of a debt in sterling money, is satisfied by the obligation to take as a substitute, one half, one third, or one fourth of the real value in paper?

\* Grotius, b. iii. c. xx. s. xvi.



It must necessarily have happened; that British creditors have sustained, from the operation of the different acts alluded to, losses more or less extensive, which the mere removal of the legal impediments which occasioned them could not repair. In many instances, the losses must have actually accrued and taken their full effect: in others, where no proceedings may have been had, the lapse of so many years must have created disabilities to pay, in debtors who were originally competent, who might have been made to pay, had there been a free course of justice.

The removal of the impediments, therefore, by opening of the courts of justice, was not an adequate satisfaction. It could not supersede the obligation of compensation for losses which had irretrievably accrued by the operation of the legal impediments, while they continued in force. The claim for this was still open on the part of Great Britain, and still to be adjusted between the two nations.

The excuse, that these laws were retaliations for prior infractions of treaty by Great Britain, was in no view an answer to the claim.†

In the first place, as has already been proved, the fact of such prior infractions was too doubtful to be finally insisted upon, and was, after a fruitless effort to obtain the acquiescence of the other party, properly and necessarily waved; so that it could not serve as a plea against reparation.

In the second place, if that fact had been indubitable, the species of retaliation was unwarrantable. It will be shown, when we come to discuss the 10th article, that the debts of private individuals are in no case a proper object of reprisals; that independent of the treaty, the meddling with them was a violation of the public faith and integrity; and that, consequently, it was due as much to our own public faith and integrity, as to the individual who had suffered, to make reparation. It was an act demanded by the justice, probity, and magnanimity of the nation.

† It may not be improper to observe, that this excuse implies a palpable violation of the then constitution of the United States. The confederation vested the powers of war and of treaty in the Union. It therefore lay exclusively with congress to pronounce, whether the treaty was or was not violated by Great Britain, and what should be the satisfaction. No state, individually, had the least right to meddle with the question, and the having done it was an usurpation on the constitutional authority of the United States.

It might be shown, on a similar principle, that all confiscations or sequestrations of *British debts*, by particular states, during the war, were also unconstitutional.

In the third place, it was essential to reciprocity in the adjustment of the disputes which had existed concerning the treaty of peace. When we claimed the reinstatement and execution of the article with regard to the posts; it was just that we should consent to the reinstatement and execution of the article with regard to debts. If the obstruction of the recovery of debts was the equivalent by way of retaliation for the detention of the posts, we could not expect to have restitution of the thing withheld, and to retain the equivalent for it likewise. The dilemma was, to be content with the equivalent, and abandon the thing; or to recover the thing, and abandon the equivalent: to have both was more than we could rightly pretend. The reinstatement of the article, with regard to the debts, necessarily included two things, the removal of legal impediments as to the future recovery; compensation for past losses by reason of those impediments. The first had been effected by the new constitution of the United States; the last is promised by the treaty.

Did our envoy reply, that the reinstatement of the article with regard to the posts included likewise compensation for their detention? Was it an answer to this, destitute of reason, that our loss, by the detention of the posts, which resolved itself essentially into the uncertain profits of a trade that might have been carried on, admitted of no satisfactory rule of computation; while the principal and interest of private debts afforded a familiar standard for the computation of losses upon them: that, nevertheless, while this was the usual, and must be the admitted standard, it is an adequate one in cases where payment is protracted beyond the allowed term of credit; since the mere interest of money does not countervail among merchants, the profits of its employment in trade, and still less the derangements of credit and fortune, which frequently result to creditors, from procrastinations of payment; and that the final damage to Great Britain, in these two particulars, for which no provision could be made, might well exceed any losses to us by the detention of the posts?

In the last place, the compensation stipulated was a *sine qua non* with Great Britain, of the surrender of the posts, and the adjustment of the controversy which had subsisted between the two countries. The making it such may be conceived to have been dictated more by the importance of the precedent, than by the quantum of the sum in question. We shall easily understand this, if we consider how much the commercial capital of Great Britain is spread over the world. The vast credits she is in the habit of extending to foreign countries, renders it to

her an essential point to protect those credits by all the sanctions in her power.—She cannot forbear to contend at every hazard against precedents of the invasion of the rights of her merchants, and for retribution where any happen. Hence it is always to be expected, that she will be peculiarly inflexible on this point: and that nothing short of extreme necessity can bring her to relax in an article of policy, which perhaps not less than any other, is a necessary prop of the whole system of her political economy.

It was, therefore, to have been foreseen that whenever our controversy with Great Britain was adjusted, compensation for obstructions to the recovery of debts would make a part of the adjustment. The option lay between compensation, relinquishment of the posts, or war. Our envoy is entitled to the applause of all good men, for preferring the first. The extent of the compensation can on no possible scale compare with the immense permanent value of the posts, or with the expenses of war. The sphere of the interferences has been too partial to make the sum of the compensation, in any event, a very serious object; and as to a war, a conscientious or virtuous mind could never endure the thoughts of seeing the country involved in its calamities, to get rid of an act of justice to individuals, whose rights, in contempt of public faith, had been violated.

Having reviewed the general considerations which justify the stipulation of compensation, it will be proper to examine if the plan upon which it is to be made, is unexceptionable.

This plan contains the following features, 1. The cases provided for are those, “where losses and damages occasioned by the operation of lawful impediments (which since the peace have delayed the full recovery of British debts, *bona fide contracted before the peace, and still owing to the creditors*, and have impaired and lessened the value and security thereof) *cannot now, for whatever reason, be actually obtained in the ordinary course of justice.* 2. There is an express exception out of this provision, *of all the cases in which losses and damages have been occasioned by such insolvency of the debtors, or other causes, as would equally have operated to produce them, if no legal impediment had existed, or by the manifest delay, or negligence, or wilful omission, of the claimants.* 3. The amount of the losses and damages, for which compensation is to be made, is to be ascertained by five commissioners to be appointed as follows; two by his Britannic majesty, two by the president with the advice and consent of the senate, the fifth by the unanimous voice of these four, if they can agree, if they cannot agree, then to be taken by lot out of two persons, one of whom to be named

by the two British commissioners, the other by the two American commissioners. 4. These five commissioners, thus appointed, are, before they proceed to the execution of their trust, to take an oath for its faithful discharge. Three of them to constitute a board; but there must be present one of the two commissioners named on each side, and the fifth commissioner.—Decisions to be made by majority of voices of those present. They are first to meet at Philadelphia, but may adjourn from place to place as they see cause. 5. Eighteen months after the commissioners make a board, are assigned for receiving applications; but the commissioners, in particular cases, may extend the term for any further term, not exceeding six months. 6. The commissioners are empowered to take into consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine them according to the merits and circumstances thereof, and as justice and equity shall appear to them to require—to examine persons on oath or affirmation, and to receive in evidence, depositions, books, papers, or copies; or extracts thereof, either according to the legal forms existing in the two countries, or according to a mode to be devised by them. 7. Their award is to be conclusive; and the United States are to cause the sum awarded in each case to be paid in specie to the creditor without deduction, and at such time and place as shall have been awarded; but no payment to be required sooner than twelve months from the day of the exchange of the ratifications of the treaty.

This provision for ascertaining the compensation to be made, while it is ample, is also well guarded.

It is confined to debts contracted before the peace, and still owing to the creditors. It embraces only the cases of loss or damage in consequence of legal impediments to the recovery of those debts which will exclude all cases of voluntary compromise, and can include none, where the laws have allotted a free course to justice. It can operate in no instance where, at present, *the ordinary course of justice* is competent to full relief, and the debtor is solvent; nor in any, where insolvency or other cause would have operated to produce the loss or damage, if no legal impediment had existed, or where it has been occasioned by the wilful delay, negligence, or omission of the creditor.

If it be said, that the commissioners have nevertheless much latitude of discretion, and that in the exercise of it they may transgress the limits intended, the answer is, that the United States, though bound to perform what they have stipulated with good faith, would not be bound to submit to a manifest

abuse of authority by the commissioners. Should they palpably exceed their commission, or abuse their trust, the United States may justifiably, though at their peril, refuse compliance. For example, if they should undertake to award upon a debt contracted since the peace, there could be no doubt that their award would be a nullity. So likewise there may be other plain cases of misconduct, which, in honor and conscience, would exonerate the United States from performance. It is only incumbent upon them to act, *bona fide*, and as they act at their peril, to examine well the soundness of the ground on which they proceed.

With regard to the reference to commissioners to settle the quantum of the compensation to be made, this course was dictated by the nature of the case. The tribunals of neither country were competent to a retrospective adjustment of losses and damages, in many cases which might require it. It is for this very reason of the incompetency of the ordinary tribunals to do complete justice, that a special stipulation of compensation, and a special mode of obtaining it, became necessary. In constituting a tribunal to liquidate the quantum of reparation, in the case of a breach of treaty, it was natural and just to devise one likely to be more certainly impartial than the established courts of either party. Without impeaching the integrity of those courts, it was morally impossible that they should not feel a bias towards the nation to which they belonged, and for that very reason they were unfit arbitrators. In the case of the spoliation of our property, we should undoubtedly have been unwilling to leave the adjustment in the last resort to the British courts; and by parity of reason, they could not be expected to refer the liquidation of compensation in the case of the debts to our courts. To have pressed this would have been to weaken our argument for a different course in regard to the spoliation. We should have been puzzled to find a substantial principle of discrimination.

If a special and extraordinary tribunal was to be constituted, it was impracticable to contrive a more fair and equitable plan for it than that which has been adopted. The remarks on the mode of determining the question respecting the river St. Croix, apply in full force here, and would render a particular comment superfluous.

To the objection of the Charleston committee, that the article erects a tribunal unknown to our constitution, and transfers to commissioners the cognizance of matters appertaining to American courts and juries, the answer is simple and conclusive. The tribunals established by the constitution do not

contemplate a case between nation and nation arising upon a breach of treaty, and are inadequate to the cognizance of it.— Could either of them hold plea of a suit of Great Britain plaintiff, against the United States, defendant? The case, therefore, required the erection or constitution of a new tribunal; and it was most likely to promote equity to pass by the courts of both the parties.

The same principle contradicts the position, that there has been any transfer of jurisdiction from American courts and juries to commissioners. It is a question not between individual and individual, or between our government and individuals, but between our government and the British government; of course, one in which our courts and juries have no jurisdiction. There was a necessity for an extraordinary tribunal to supply the defect of ordinary jurisdiction; and so far is the article from making the transfer imputed to it, that it expressly excepts the cases in which effectual relief can be obtained in the ordinary course of justice.

Nations acknowledging no common judge on earth, when they are willing to submit the question between them to a judicial decision, must of necessity constitute a special tribunal for the purpose. The mode by commissioners, as being the most unexceptionable, has been repeatedly adopted.

I proceed to reply to some other objections which have been made against the provision contained in this article.

It is charged with affixing a stigma on the national character, by providing reparation for an infraction, which, if it ever did exist, has been done away, there being now a free course to the recovery of British debts in the courts of the United States.

An answer to this objection has been anticipated by some observations heretofore made. The giving a free course to justice in favor of British creditors, which has been effected by the new constitution of the United States, though it obviates the future operation of legal impediment, does not retrospectively repair the losses and damages which may have resulted from their past operation. In this respect, the effects continued, and reparation was due. To promise it, could fix no stigma on our national character. That was done by the acts which created the cause for reparation. To make it, was as far as possible to remove the stigma.

It has been said, that the promise of compensation produces injustice to those states which interposed no legal impediments to the recovery of debts, by saddling them with a part of the burden arising from the delinquencies of the transgressing states.

But the burden was before assumed by the treaty of peace. The article of that treaty, which engaged that there should be no lawful impediments to the recovery of debts, was a guarantee by the United States of justice to the British creditors. It charged them with the duty of taking care that there was no legal obstacle to the recovery of the debts of those creditors, and consequently with a responsibility for any such obstacle which should happen, and with the obligation of making reparation for it. We must, therefore, refer to the treaty of peace, not to the last treaty, the common charge which has been incurred by interference in the recovery of British debts. The latter only carries into execution the promise made by the former. It may be added that it is a condition of the social compact that the nation at large shall make retribution to foreign nations for injuries done to them by its members.

It has been observed, that Mr. Jefferson has clearly shown, that interest in cases like that of British debts, is liable, during the period of the war, to equitable abatements and deductions; and that, therefore, the discretion given to the commissioners on this head ought not to have been as large as it appears in the article.

Mr. Jefferson has, no doubt, offered arguments of real weight to establish the position that judges and juries have, and exercise, a degree of discretion in any article of interest; and that the circumstances of our war with Great Britain, afford strong reasons for abatements of interest. But it was foreign to his purpose, and accordingly he has not attempted to particularise the rules which ought to govern in the application of this principle to the variety of cases in which the question may arise: and he has himself noted that the practice in different states and in different courts, has been attended with great diversity. Indeed, admitting the right to abate interest under special circumstances, in cases in which it is the general rule to allow it, the circumstances of each case, are, perhaps, the only true criterion of the propriety of an exception. The particular nature of the contract, the circumstances under which it was entered into, the relative situation of parties, the possibility or not of mutual access; these and other things would guide and vary the exercise of the discretion to abate. It was, therefore, right to leave the commissioners, as they are left, in the same situation with judges and juries:—to act according to the true equity of the several cases or of the several classes of cases.

Let it be remembered, that the government of Great Britain has to consult the interests and opinions of its citizens, as well as the government of the United States those of their citizens.

The only satisfactory course which the former could pursue, in reference to its merchants, was to turn over the whole question of interest as well as principal, to the commissioners. And as this was truly equitable, the government of the United States could make no well-founded opposition to it.

CAMILLUS.

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No. XV.

**I**T is the business of the seventh article of the treaty, to provide for two objects: one, compensation to our citizens for injuries to their property, by irregular, or illegal captures, or condemnations; the other, compensation to British citizens for captures of their property within the limits and jurisdiction of the United States, or elsewhere, by vessels originally armed in our ports, *in the cases in which the captured property having come within our posts and power, there was a neglect to make restitution.*

The first object is thus provided for; 1. It is agreed, that in all cases of irregular and illegal captures or condemnations of the vessels and other property of citizens of the United States, under colour of authority or commissions from his Britannic majesty, in which adequate compensation for the losses and damages sustained, cannot, for whatever reason, be actually obtained in the ordinary course of justice, full and complete compensation for the same will be made by the British government to the claimants; except were the loss or damage may have been occasioned by the manifest delay or negligence, or wilful omission of those claimants. 2. The amount of the losses and damages to be compensated, is to be ascertained by five commissioners, who are to be appointed in exactly the same manner as those for liquidating the compensation to British creditors. 3. These commissioners are to take a similar oath, and to exercise similar powers for the investigation of claims with those other commissioners: and they are to decide according to the merits of the several cases, and to justice, equity, and the laws of nations. 4. The same term of eighteen months is allowed for the reception of claims, with a like discretion to extend the term, as in the case of British debts. 5. The award of these commissioners, or of three of them, under the like guards as in that case, is to be final and conclusive, both as to the justice of the claims, and to the amount of the compensation. And, lastly, his Britannic majesty is to cause the compensation awarded, to be paid to the claimants in specie, without deduction, at such times and places, and upon the condition of such releases or assignments, as the commissioners shall prescribe.



Mutually and dispassionately examined, it is impossible not to be convinced, that this provision is ample, and ought to be satisfactory. The course of the discussion will exhibit various proofs of the disingenuousness of the clamours against it; but it will be pertinent to introduce here, one or two samples of it.

It has been alleged, that while the article preceding, and this article, provide effectually for every demand of Great Britain against the United States, the provision for this important and urgent claim of ours is neither explicit nor efficient, nor co-extensive with the object, nor bears any proportion to the *summary method*, adopted for the satisfying of British claims.

This suggestion is every way unfortunate. The plan for satisfying our claim, except as to the description of the subject which varies with it, is an exact copy of that for making compensation to British creditors. Whoever will take the pains to compare, will find, that in the leading points, literal conformity is studied; and that in others, the provisions are assimilated by direct references; and will discover also, this important distinction in favor of the efficiency and summariness of the provision for our claim—that while the commissioners are expressly restricted from awarding payment to British creditors, to be made sooner than one year after the exchange of ratifications of the treaty, they are free to award it to be made the very day of their decision, for the spoliations of our property. As to compensation for British property, captured within our limits, or by vessels originally armed in our ports and not restored, which is the only other British claim that has been provided for, it happens that this, forming a part of the very article we are considering, is submitted to the identical mode of relief, which is instituted for making satisfaction to us.

So far, then, is it from being true, that a comparison of the modes of redress provided by the treaty, for the complaints of the respective parties, turns to our disadvantage, that the real state of the case exhibits a substantial similitude, with only one material difference, and that in our favor; and, that a strong argument for the equity of the provisions on each side, is to be drawn from their close resemblance of each other.

The other suggestion alluded to, and which has been shamelessly reiterated, is, that Denmark and Sweden, by pursuing a more spirited conduct, had obtained better terms than the United States. It is even pretended, that one or both of them had actually received from Great Britain a gross sum on account—in anticipation of an ultimate liquidation.—In my second number, the erroneousness of the supposition, that those

powers had obtained more than the United States, was intimated; but the subsequent repetition of the idea, more covertly in print, and very openly and confidently in conversation, renders expedient an explicit and peremptory denial of the fact. There never has appeared a particle of evidence to support it; and after challenging the asserters of it to produce their proof, I aver, that careful enquiry, at sources of information, at least as direct and authentic as theirs, has satisfied me, that the suggestion is wholly unfounded, and that at the time of the conclusion of our treaty with Great Britain, both Denmark and Sweden were behind us in the effect of their measures for obtaining reparation.

What are we to think of attempts like these, to dupe and irritate the public mind? Will any prudent citizen still consent to follow such blind or such treacherous guides?

Let us now, under the influence of a calm and candid temper, without which truth eludes our researches, by a close scrutiny of the provision, satisfy ourselves, whether it be not really a reasonable and proper one. But previous to this it is requisite to advert to a collateral measure, which was also a fruit of the mission to Great Britain, and which ought to be taken in conjunction with the stipulations of this article. I refer to the order of the British king in council, of the 6th of August, 1794, by which order, the door before shut by lapse of time, is opened to appeals from the British West India courts of admiralty, to be brought at any time which shall be judged reasonable by the lords commissioners of appeals in prize causes. This, of itself, was no inconsiderable step towards the redress of our grievances; and it may be hoped, that with the aid which the government of the United States has given to facilitate appeals, much relief may ensue from this measure. It will not be wonderful, if it should comport with the pride and policy of the British government, by promoting justice in their courts, to leave as little as possible to be done by the commissioners.

I proceed now to examine the characteristics of the supplementary provision made by the article, in connection with the objections to it.

It admits fully and explicitly the principle, that compensation is to be made for the losses and damages sustained by our citizens, by irregular or illegal captures, or condemnations of their vessels and other property, under colour of authority (which includes governmental orders and instructions) or of commissions of his Britannic majesty. It is to be observed, that the causes of the losses and damages are mentioned in the disjunctive, "captors or condemnations;" so that damages by

captures, which were not followed by condemnations, are provided for as well as those where condemnations did follow.

A cavil has been raised on the meaning of the word, colour, which it is pretended, would not reach the cases designed to be embraced; because the spoliations complained of, were made, not merely by *colour*, but actually by *virtue* of instructions from the British government.

For the very reason that this subtil and artificial meaning ascribed to the term, would tend to defeat the manifest general intent of the main provision of the article, which is plainly to give reparation for irregular or illegal captures or condemnations of American property, contrary to the laws of nations—that meaning must be deemed inadmissible.

But in fact, the expression is the most accurate that could have been used, to signify the real intent of the article. When we say, a thing was done by colour of an authority or commission, we mean one of three things; that it was done on the pretence of a *sufficient* authority or commission *not validly* imparted, or on the pretence of *such* an authority or commission *validly* imparted but *abused* or *misapplied*, or on the pretence of an *insufficient* authority or commission, regularly, as to form, imparted and exercised. It denotes a defect of rightful and just authority, whether emanating from a wrong source, or improperly from a right source; whereas the phrase “by virtue of,” is most properly applicable to the valid exercise of a valid authority. But the two phrases are not unfrequently used as synonymous. Thus, in a proclamation of the British king, of the 25th of May, 1792, he, among other things, forbids all his subjects, by *virtue* or under *colour* of any foreign commission or letters of reprisals, to disturb, infect, or damage, the subjects of France.

In whose mouths does the article put the expression? In those of citizens of the United States? What must they be presumed to have meant? Clearly this; that by colour of instructions or commissions of his Britannic majesty, either exercised erroneously, or issued erroneously, as being contrary to the laws of nations; the citizens of the United States had suffered loss and damage by irregular or illegal captures or condemnations of their property. What is the standard appealed to, to decide the irregularity or illegality to be redressed? Expressly the laws of nations. The commissioners are to decide “according to the merits of the several cases, to justice, equity, and the *laws of nations*.” Wherever these laws, as received and practised among nations, pronounce a capture or condemnation of neutral property to have been irregular or illegal, though by colour of an authority or commission of his Britannic ma-

jeſty, it would be the duty of the commiſſioners to award compensation.

The criticiſm, however, fails on its own principle, when teſted by the fact. The great ſource of grievance, intended to be redreſſed by the article, proceeded from the inſtruction of the 6th of November, 1793. That inſtruction directs the commanders of ſhips of war and privateers, to ſtop and detain all ſhips laden with goods, the produce of any colony belonging to France, or carrying proviſions and other ſupplies for the uſe of ſuch colony, and to bring the ſame, with their cargoes, to *legal adjudication* in the Britiſh courts of admiralty. Theſe terms, "*legal adjudication*," were certainly not equivalent, upon any rational conſtruction to *condemnation*. Adjudication means ſimply, a judicial deciſion, which might be either to acquit or condemn. Yet the Britiſh Weſt India courts of admiralty appear to have generally acted upon the term as ſynonymous with condemnation. In doing this, they may be truly ſaid, even in the ſenſe of the objection, to have acted by colour, only, of the inſtruction.

The Britiſh cabinet have diſavowed this conſtruction of the Weſt India courts; and have as we have ſeen, by a ſpecial act of interference, opened a door which was before ſhut to a reversal of their ſentences, by appeal to the courts in England. We find, alſo, that the term adjudication is uſed in the XVIIth article of our late treaty as ſynonymous, only with judicial deciſion, according to its true import. This, if any thing were wanting, would render it impoſſible for the commiſſioners to reſuſe redreſs on the ground of the condemnations, if otherwiſe illegal, being warranted by the pretended ſenſe of the words legal adjudication. But in reality, as before obſerved, their commiſſion will be to award compensation in all caſes, in which they are of opinion, that, according to the eſtabliſhed laws of nations, captures or condemnations were irregular or illegal, however otherwiſe authorized; and this in contempt of the quibbling criticiſm which has been ſo cunningly deviſed.

2d, The proviſion under conſideration, obliges the Britiſh government, in all caſes of illegal captures or condemnations, in which adequate compensation cannot, for whatever reaſon, be actually had in the ordinary courſe of juſtice, to make full and complete compensation to the claimants, which is to be paid in ſpecie to themſelves, without deduction, at ſuch times and places as ſhall be awarded.

They are not ſent for redreſs to the captors, or obliged to take any circuitous courſe for their payment, but are to receive it immediately from the treaſury of Great Britain.

3d, The amount of the compensation in each case is to be fixed by five commissioners, two appointed by the United States, two by Great Britain: the fifth by these four, or in case of disagreement, by lot. These commissioners to meet and act in London.

It seems impossible, as has been observed and shown in the analogous cases, to imagine a plan for organizing a tribunal more completely equitable and impartial than this; while it is the exact counterpart of the one which is to decide on the claims of British creditors. Could it have been believed, that so palpable an error could have been imposed on a town meeting, in the face of so plain a provision, as to induce it to charge against this article, that in a national concern of the United States, redress was left to British courts of admiralty? Yet, strange as it may appear, this did happen even in the truly enlightened town of Boston. The just pride of that town will not quickly forget, that it has been so compromised.

The truth is, that, according to the common usage of nations, the courts of admiralty of the belligerent parties are the channels through which the redress of injuries to neutrals is sought. But Great Britain has been brought to agree to refer all the cases, in which justice cannot be obtained through those channels, to an extraordinary tribunal; in other words, to arbitrators mutually appointed.

It is here that we find the reparation of the national wrong which we had suffered.—In admitting the principle of compensation by the government itself, in agreeing to an extraordinary tribunal, in the constitution of which the parties have an equal voice, to liquidate that compensation, Great Britain has virtually and effectually acknowledged the injury which had been done to our neutral rights, and has consented to make satisfaction for it. This was an apology in fact, however it may be in form.

As it regards our honor, this is an adequate, and the only species usual in similar cases between nations; pecuniary compensation is the true reparation in such cases—governments are not apt to go upon their knees to ask pardon of other governments—Great Britain, in the recent instance of the dispute with Spain about Nootka Sound, was glad to accept of a like reparation. It merits remark, incidentally, that the instrument, which settles this dispute, expressly waves, like our treaty, reference to the merits of the complaints and pretensions of the respective parties. Is our situation such as to authorize us to pretend to impose humiliating conditions on other nations!

It is necessary to distinguish between injuries and insults, which we are too apt to confound. The seizures and spolia-

tions of our property fall most truly under the former head. The acts which produced them, embraced all the neutral powers, were not particularly levelled at us, bore no mark of an intention to humble us by any peculiar indignity or outrage.

These acts were of June 8th, and of November 6th, 1793. The seizure of our vessels going with provisions to the dominions of France, under the first, was put on the double ground of a war extraordinary in its principle,\* and of a construction of the laws of nations, which, it was said, permitted that seizure; a construction not destitute of colour, and apparently supported by the authority of Vattel, though, in my opinion, ill founded. It was accompanied also by compensation for what was taken, and other circumstances, that evinced a desire to smooth the act. The indiscriminate confiscation of our property, upon the order of the 6th of November, which was the truly flagrant injury, was certainly unwarranted by that order (and no secret one has appeared)—and the matter has been so explained by the British government. It is clear that evils suffered under acts so circumstanced, are injuries rather than insults—and are so much the more manageable as to the species and measure of redress. It would be Quixotism to assert that we might not honorably accept in such a case, the pecuniary reparation which has been stipulated.

But it is alleged, in point of interest, it is unsatisfactory—tedious in the process—uncertain in the event; that there ought to have been actual and immediate indemnifications, or at least, a payment upon account.

A little calm reflection, will convince us, that neither of the two last things was to be expected. There was absolutely no criterion, either for a full indemnification, or for an advance upon account. The value of the property seized and condemned (lay out of the case, damages upon captures where condemnation had not ensued) was not ascertained, even to our own government, with any tolerable accuracy. Every well informed man will think it probable, that of this, a proportion was covered French property.—There were, therefore, no adequate data, upon which our government could demand, or the British government pay, a determined sum.—Both governments must have acted essentially by guess. Ours could not in honor or conscience have made even an estimate but upon evidence. It might have happened, that a sum which appeared upon the evidence that had been collected, sufficient, might have proved on further evidence insufficient. Too little, as well as too much,

\* Though this country has viewed the principle of the war favorably, it is certain that Europe generally, the neutral powers not wholly excepted, has viewed it in a different light, so that this was not a mere pretence.

might have been demanded and paid. But it will perhaps be said, that some gross estimate might have been formed; and that of this, such a part might have been advanced upon account, as was within the narrowest probable limit, liable to eventual adjustment. Let us for a moment suppose this done—what good end would it have answered? How could the United States have distributed this money among the sufferers, till it was ascertained which of them was truly entitled, and to how much? Is it not evident, that if they had made any distribution, before the final and perfect investigation of the right of each claimant, it would be at the risk of making mispayments, and of being obliged to replace the sums mispaid, perhaps at a loss to the United States, for the benefit of those who should be found to be better entitled? Would it have been expedient for our government to have incurred this risk to its constituents? And if the money was to be held undistributed till an investigation of claims was completed, to what purpose the haste about an advance?

On the other hand—Is it in this loose, gross way, that nations transact affairs, with each other? Do even individuals make indemnifications to one another, in so lumping a manner? Could it be expected of Great Britain, that she would pay, till it was fairly ascertained what was to be paid; especially when she had too much cause to suspect, that a material proportion of the property claimed, might turn out to be French? Would it have been justifiable on our part, to make her compliance with such a demand, the *sine qua non* of accommodation and peace? Whoever will believe that she would have complied with so humiliating a requisition, must be persuaded that we were in a condition to dictate, and she in a condition to be obliged to receive any terms that we might think fit to prescribe? The person who can believe this, must be, in my opinion, under the influence of a delirium, for which there is no cure in the resources of reason and argument.

If it must be admitted, that it was matter of necessity, that investigation should precede payment; then I see not what more summary mode could have been devised. Who more capable of proceeding with dispatch, than arbitrators untrammelled with legal forms; vested with powers to examine parties and others, on oath, and to command and receive all evidence in their own way? Here are all the means of expedition divested of every clog.

Eighteen months are allowed for preferring claims, but the commissioners are at liberty to adjust them as fast as they are preferred.—In every case in which it appears to them *bona fide*,

that the ordinary course of justice is inadequate to relief, they may forthwith proceed to examine and decide. There is no impediment, no cause of delay whatever, more than the nature of a due investigation always requires.

The meeting of the commissioners at London, was recommended by the circumstance that the admiralty courts were likely to concentrate there a considerable part of the evidence, on which they were to proceed; which upon the whole, might favor dispatch, as well as more complete justice. In many cases, the decisions of those courts may come under their review.

As to the uncertainty of the event, this, as far as it may be true, was inseparable from any plan, bottomed on the idea of a previous investigation of claims: and it has been shown, that some such plan was reasonable and inevitable.

It may also be added, that the plan affords a moral certainty of substantial justice, which is all that can rationally be expected in similar affairs; compensation, where due, is explicitly stipulated. A fair and adequate mode of deciding and liquidating it has been settled. All the arguments which were adduced to prove the probability of good faith, in regard to the posts, apply equally to this subject. The interest which every nation has in the preservation of character, and which the most profligate dare not entirely disregard—the consideration of defeating the fulfilment of the stipulations on our part—the size of the object, certainly not of great magnitude—the very discouraging situation for replunging suddenly into a new war, in which the present war will in every event leave Great Britain. These are reasons which afford solid ground of assurances that there will be no evasion of performance.

As to the commissioners, two of the five will be of our choice, a third may be so likewise; but should it prove otherwise, it will be surprising if one of the other three, all acting under oath, and having character at stake, shall not be disposed to do us reasonable justice.

3d, While their power is co-extensive with *all* losses and damages from irregular or illegal captures or condemnations, their sentence in each case is to be conclusive, and the rules which are to govern it as prescribed by the article, are the merits of each case, justice, equity, and the law of nations. What greater latitude could have been desired to be given? What greater latitude could have been given? What else in the case was there to have been provided for? What is meant by the assertion, that the provision is not commensurate with the object?

The general and unqualified reference to the laws of nations, dismisses all pretence to substitute the arbitrary regulations of



Great Britain as rules of decision. Her instructions or orders, if incompatible with those laws, are nullities.

Thus the treaty unfetters the question between us and her, from the commencement of the war, and with her own consent, commits them at large to a tribunal to be constituted by mutual choice.

Will any man of candour and equity say, that a better provision ought to have been expected than has been accomplished?

The alternative was immediate indemnification, by actual payment in whole or in part, without examination of the extent or justice of claims; or future indemnification, after a due investigation of both in some equitable and effectual mode. The first was attended with difficulties on our side, and with solid objections on the other side. The last was therefore the truly reasonable course, and it has been pursued on a very proper plan.—The causes of loss and damage are fully embraced. They are referred to the decision of an unexceptionable tribunal, to be guided by unexceptionable rules, and the indemnification which may be awarded, is to be paid fully, immediately, and without *de tour* by the British government itself. Say ye impartial and enlightened, if all this be not as it ought to have been!

CAMILLUS.

[TO BE CONTINUED.]

## GOVERNOR FENNER'S REPLY

*To the British Vice Consul's Note,\* enclosing Captain Home's Letter.*

SIR,

Providence, August 5, 1795.

I AM to acknowledge the receipt of your letter of the 2d instant, which came to hand this morning.

With regard to the application of Captain Home, such was the indecency of his letter to you, and such his subsequent conduct, in searching and capturing Captain Bliss within the limits and jurisdiction of the state, that I must wait for instructions from the president of the United States, to whom I shall transmit a full account of the behaviour of Captain Home by the next mail.

I am not a little surprized that you, sir, in your character as vice consul of his Britannic majesty, should be instrumental in offering this unprovoked and unprecedented insult to the state.

I am, with due esteem and regard,

Sir, your most humble servant,

A. FENNER.

*Thomas W. Moore, Esquire, his Britannic Majesty's Vice Consul, for Rhode Island, &c.*

\* See page 215.

## GEORGE WASHINGTON,

PRESIDENT OF THE UNITED STATES OF AMERICA,

*To all whom it may concern.*

**T**HOMAS WILLIAM MOORE, Esquire, having heretofore produced to me his commission, as vice consul of his Britannic majesty, within the state of Rhode Island, and having thereon received from me an exequatur, bearing date the 5th day of December, 1792, recognizing him as such, and declaring him free to exercise, within the said state, such functions and powers, as may be given or permitted, by the laws of the land, to the consuls of nations, between whom and the United States, no treaty or convention exists, for permitting specific powers and functions, to be exercised by their consuls reciprocally: And the said Thomas William Moore, having, on the second day of August, 1795, transmitted to the governor of the state of Rhode Island, a letter, dated the 31st of July, 1795, addressed to him the said Thomas William Moore, and written by captain Rodham Home, commander of the British ship of war, Africa, then lying at or near the port of New Port, in the said state; which said letter is conceived in terms of menace and insult against the authority of the United States: And the said Thomas William Moore having participated in the commission of the said menace and insult, by transmitting the letter as aforementioned, having perfect knowledge of its contents: And it being no longer proper, and consistent with the respect due to the government and authority of the United States, that the said Thomas William Moore should continue to exercise any of the functions or powers heretofore allowed in virtue of his said commission of vice consul.

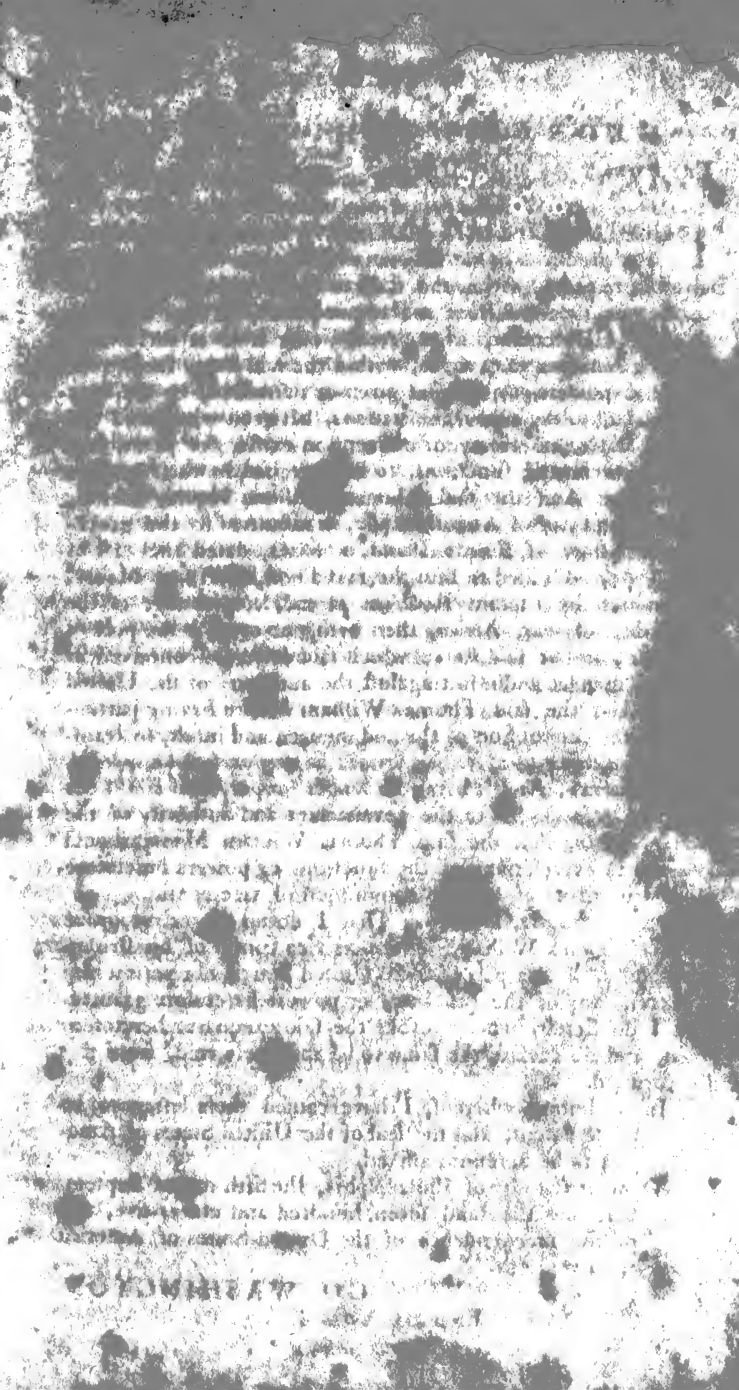
*These are therefore to declare,* That I do no longer recognize the said Thomas William Moore as vice consul of his Britannic majesty, in any part of these United States, nor permit him to exercise any of the functions or powers heretofore granted. And I do hereby wholly revoke the said exequatur heretofore given, and do declare the same to be absolutely void, from this day forward.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States of America to be hereunto affixed.

Done at the city of Philadelphia, the fifth day of September, one thousand seven hundred and ninety-five, and of the independence of the United States of America the twentieth.

GO. WASHINGTON.

END OF VOL. I.











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